

193-104

MONTH-TO-MONTH

LEASE OF IMPROVED SPACE BETWEEN

THE PORT OF PORTLAND

AND

PORTLAND SHIPYARDS TRAINING CENTER, INC.

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MONTH-TO-MONTH  
LEASE OF IMPROVED SPACE

THIS LEASE, dated this 1<sup>ST</sup> day of JUNE 1993, is entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (hereinafter referred to as "Port"), and the PORTLAND SHIPYARDS TRAINING CENTER, INC., a non-profit corporation organized under the laws of the State of Oregon (hereinafter referred to as "Lessee"), for lease of certain described Premises located at the Portland Ship Repair Yard, Swan Island ("PSRY").

RECITALS

WHEREAS, Lessee intends to operate a training facility to provide apprenticeship, upgrading, and refresher training to shipyard workers such as boilermakers, machinists, painters, laborers, and sheetmetal workers and Lessee desires to provide such training on-site at PSRY.

WHEREAS, Lessee's operation of this training facility at PSRY will benefit the Port by enhancing the skills of the workforce available to ship repair companies at PSRY; and

WHEREAS, the Port agrees that the rental rate stated below, together with the benefits to be obtained by the Port from the operation of Lessee's training facility at PSRY, constitute due and adequate consideration for this Lease;

NOW THEREFORE, in consideration of the mutual covenants set out in this Lease, the parties agree as follows:

ARTICLE I. - AGREEMENT TO LEASE, DESCRIPTION OF PREMISES

Section 1.1 - Description of Premises: The Port leases to Lessee, and Lessee leases from the Port, on the terms and conditions stated herein, the Premises consisting of approximately



13,652 square feet of shop and office space commonly known as Bay 1 and Shop 2 of Building 10, and approximately 2400 square feet of shop space commonly known as Building 6 (hereinafter referred to as "Premises") as shown on Exhibit Nos. A.1 and A.2, attached hereto and made a part hereof . Upon construction or installation of additional improvements approved by the Port as provided in this Lease, in, under or upon the Premises (collectively "Improvements"), such Improvement(s) shall become a part of the Premises unless otherwise stated herein.

Section 1.2 - Use of Premises:

1.2.1 Lessee shall use the Premises only for the following purpose(s): As a training center for shipyard craft apprentice and journeyman upgrade training and refresher programs and support functions reasonably related thereto. No sandblasting or spray painting is permitted in Building 10 leased areas, nor shall paints, thinners or solvents be stored in Building 10. Abrasive grit blasting and painting with water based paints only shall be permitted in Building 6. Proper ventilation for painting and abrasive grit blasting shall be provided by Lessee at Lessee's sole expense.

1.2.2 No other use may be made of the Premises without the written approval of the Port. Except as a necessary and incidental use in conjunction with the use authorized for the Premises pursuant to Section 1.2.1 above, no use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of Hazardous Substances as defined in Section 6.3 below. Under no circumstances shall any use be made of, or conduct occur on, the Premises which would cause the Premises, or any part thereof, or the Building, Improvements of the facility of which they are a part, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any Environmental Law as defined in Section 6.3 below.

1.2.3 The Port shall have the option, but shall not be required to, request the Lessee to provide the Port with a list of all materials and activities which are or foreseeably will

occur on the Premises which might constitute an environmental liability. Under no circumstances shall the Port be liable for failure to request or update said list.

1.2.4 In no event shall Lessee store, handle, transport, dispose, or treat any Hazardous Substances on the Premises which are generated by or from cleanup, removal, or remediation operations or activities from third party sources outside PSRY.

1.2.5 In no event shall the Lessee ever permanently or temporarily store the following product categories without the Port's prior written approval, except as specifically authorized by federal, state, or local Environmental Law or regulation:

1. PCBs, PCB contaminated materials, and spill residues containing PCBs.
2. Asbestos, asbestos-contaminated materials, and spill residues containing asbestos.
3. Radioactive materials (as defined by state, federal, and local regulations including but not limited to United States Department of Transportation (US D.O.T.) classifications, and restrictions as defined in OAR Chapter 333, Division 100-005 (51) or as defined by Oregon Health Division.
4. Explosive materials and flammable solids (US D.O.T. Classification).
5. Poison Gases (Poison A, US D.O.T. classification).
6. Reactive materials (Defined by RCRA characteristic or reactivity).
7. Medical, biological, or infectious waste.

1.2.6 Lessee shall at all times exercise due care in connection with the handling of Hazardous Substances on the Premises and shall not cause or permit Hazardous Substances to be spilled, leaked, disposed of, treated, or otherwise released on the Premises.

1.2.7 Before commencing the use, generation, accumulation, storage, treatment, or other handling of Hazardous Substances on the Premises, Lessee shall provide the Port with copies of all necessary permits, authorizations and notices required by any Environmental Law as described in Section 6.3 herein, with respect to such activities. Lessee shall at all times comply with all Environmental Laws as defined in Section 6.3 herein which are applicable to the Premises or to the Lessee's activities on the Premises.

1.2.8. Lessee shall not in any manner deface or injure the Premises or any portion thereof; or overload the floors; or permit anything to be done upon the Premises which would cause an increase in the Fire Insurance rating to the building; or commit any nuisance in or about the Premises; or to use or permit the use of the Premises for lodging or sleeping purposes or for any illegal purposes. Lessee shall comply at Lessee's own cost and expense with all orders, notices, regulations, or requirements of any municipality, state, or other governmental authority respecting the use of said Premises.

1.2.9 The Lessee shall not in any manner overload the Port-owned crane located within Building 10, Bay 1, or operate said crane in a manner inconsistent with its design or intended use.

Section 1.3 - Appurtenant Rights:

1.3.1 Lessee, its customers, agents, representatives, suppliers, and invitees and subcontractors authorized to be operating in the yard shall have the non-exclusive right to use the Common Areas, such right to be in common with others to whom the Port has granted or may grant such similar right. The term "Common Areas," as used herein, shall mean the roadways, pedestrian walkways, alleyways, driveways, delivery areas, trash removal areas, and any other areas, except for berth and drydock lay down areas, where such areas have been designated by the Port as areas to be used by tenants of the Port or those having Facility Agreements in common with other tenants and users of the Port, provided that nothing stated herein shall prohibit the Port from barring from Port property any person or entity which fails to comply with applicable laws, ordinances, rules and regulations including those adopted by the Port Commission and those adopted by the Executive Director or the Executive Director's designee..

1.3.2 In addition to any other rights granted by law, The Port and its Executive Director, or the Executive Director's designee, reserve the following specific rights with respect to the Common Areas:

1.3.2.1 To establish reasonable rules and regulations for the use of said Common Areas;

1.3.2.2 To use or permit the use of such Common Areas by others to whom the Port may grant or may have granted such rights in such manner as the Port may from time to time so grant;

1.3.2.3 To close all or any portion of the Common Areas to make repairs or changes, to prevent a dedication of the Common Areas or the accrual of any rights to any person or the public, or to discourage unpermitted use of the Common Areas;

1.3.2.4 To construct additional buildings or to alter or remove buildings or other improvements in the Common Areas and to change the layout of such Common Areas, including the right to add to or subtract from their shape and size or to change their location;

1.3.2.5 To exercise any of the Port's governmental powers over the Common Areas.

## ARTICLE II. - TERM

Section 2.1 - Term: The term of this Lease shall commence on July 1, 1993 and continue month to month until terminated by either party upon thirty days' written notice or unless otherwise terminated under the provisions hereof.

## ARTICLE III. - RENTAL

Section 3.1 - Basic Rent: The Lessee shall pay, in advance, to the Port as rent the sum of \$1000.00 per month, as Basic Rent.

Section 3.2 - Time and Place of Payments: Lessee shall pay the Port the monthly rental which shall be due and payable on or before the 10th day of each month, said payments to be delinquent if not paid when due. In the event the Lease commences after the first day of a month, the Basic Rent for the first month shall be prorated based on the number of days in the month being prorated.



3.2.1 Payment shall be to the Port at The Port of Portland, Post Office Box 5095, Portland, Oregon 97208, or such other place as the Port may designate. All amounts not paid by the Lessee when due shall bear a delinquency charge at the rate of 18% per annum. The delinquency charge on overdue accounts is subject to periodic adjustment to reflect the Port's then current rate on overdue accounts.

Section 3.3 - Acceptance of Late Rent: The Port shall be entitled, at its sole and complete discretion, to either accept or reject a tender payment of rent which is not paid when due. In the event the Port elects to accept a tender of payment of rent after the time when such payment is due, the Port may do so without thereby waiving any default based upon the failure of Lessee to make such payment when due and without waiving Lessee's continuing obligation to make such payments when required under the terms of this Lease. Lessee hereby acknowledges that this constitutes a waiver by Lessee of any argument that by accepting a late payment of rent, the Port has waived any default which is based upon such late payment or has waived Lessee's continuing obligation to make such payments when and as required by the terms of this Lease.

#### ARTICLE IV. - LESSEE'S OTHER OBLIGATIONS

Section 4.1 - Construction of Improvements/Alterations: The Lessee shall make no construction, alteration, or changes on or to the Premises without the prior written consent of the Port. At least thirty days prior to any approved construction, alteration, or changes upon the Premises or Improvements, Lessee shall submit to the Port architectural and mechanical final plans and specifications, site-use plan, and architectural rendering thereof and shall not commence any construction until it has received the Port's written approval. All plans for construction, alteration, or changes shall be signed by an architect or engineer licensed in the State of Oregon. Should the Port fail to take action concerning the plans and/or specifications submitted to it within forty-five days, said plans and/or specifications shall be deemed approved.

4.1.1 No such work shall be undertaken until Lessee has procured and paid for,

so far as the same may be required from time to time, all municipal and other governmental permits and authorizations required with respect to the work. Procurement of such permits and authorizations shall be subsequent to Lessee's obtaining Port approval pursuant to Section 4.1.

4.1.2 All work shall be performed in a good and workmanlike manner, in conformance to all laws and regulations, and, in the case of alterations or additions to existing Improvements, shall be of such quality and type that, when completed, the value and utility of the Improvements which were changed or altered shall be not less than the value and utility of such Improvements immediately before such change or alteration. All work shall be prosecuted with reasonable dispatch.

4.1.3 Thirty days after the completion of any work under this Section 4.1, Lessee shall deliver to the Port complete and fully detailed "AS-BUILT" drawings of the completed Improvements prepared by an architect licensed in the State of Oregon.

Section 4.2 - Maintenance: Except for the Port maintenance responsibilities provided in Section 5.1 herein, the Lessee shall keep and maintain the Premises and Improvements of any kind, which may be erected, installed, or made thereon by the Lessee or the Port, in good and substantial repair and condition and shall promptly make all necessary repairs thereto at Lessee's sole expense. Lessee shall be responsible at its own cost and expense for the maintenance of the interior of the Premises and Improvements including, but not limited to, heating and air conditioning units, electric lines and fixtures, flooring, partitions, walls, and ceilings. Lessee shall also be responsible for maintenance of the exterior doors and windows. The Lessee shall provide at, the Lessee's expense, proper containers and removal service for trash and garbage and shall keep the Premises free and clear of rubbish, debris, and litter at all times.

Section 4.3 - Taxes: Unless exempt, the Lessee agrees to pay all lawful taxes and assessments which during the term hereof or any extension may become a lien or which may be levied by the state, county, city, or any other tax-levying body upon the Premises or

Improvements, upon any taxable interest by Lessee acquired in this Lease, or any taxable possessory right which Lessee may have in or to the Premises or the Improvements thereon by reason or its occupancy thereof, as well as all taxes on all taxable property, real or personal, owned by the Lessee in or about said Premises. Upon making such payments, the Lessee shall give to the Port a copy of the receipts and vouchers showing such payment. The Lessee understands that Port property is exempt from property taxation until leased to a taxable entity. In the event the term of this Lease or any extension thereof shall end after June 30 of any year, the Lessee shall be responsible for payment of property taxes for the entire tax year without proration or, in the event of any change in property tax law, for any taxes due under such law.

Section 4.4 - Liens: The Lessee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with the Lessee's consent to be furnished to or for the Lessee in, upon, or about the Premises or Improvements, which may be secured by any mechanic's, materials men's, or other lien against the Premises or Improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Lessee may in good faith contest any mechanics or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require the Lessee to procure a payment bond in the amount of the contested lien.

Section 4.5 - Utilities: The Lessee shall promptly pay any charges for telephone, and all other charges for utilities which may be furnished to the Premises or Improvements at the request of or for the benefit of Lessee, except for electricity, natural gas, water, sanitary sewer, storm drainage, and gas, and oxygen which shall be provided by the Port. Charges for all Port-provided utilities are included in the Basic Rent.



4.5.1 In no event shall the Lessee overload the electrical circuits from which the Lessee obtains current.

Section 4.6 - Advertisement Signs: Subject to the provisions hereof, the Lessee shall have the right to install or cause to be installed appropriate signs on the Premises to advertise the nature of its business. The cost for installation and operation of such signs shall be borne by the Lessee. The Lessee shall not erect, install, nor permit to be erected, installed or operated upon the Premises herein any sign or other advertising device without having first obtained the Port's written consent thereto which shall not be unreasonably withheld, as to size, construction, location, and general appearance. All such installations shall be in accordance with the Portland Ship Repair Yard Signing Standards as adopted by the Port from time to time.

Section 4.7 - Safety Requirements:

4.7.1 The Lessee shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. The Lessee shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for the Lessee in any way connected with the conduct of the Lessee pursuant to this Lease.

4.7.2 The Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and to that end shall provide and maintain such fire suppression and other fire protection equipment as may be required pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises.

Section 4.8 - Access to Premises: Except as provided in Section 4.8.1, the Port shall at all times during ordinary business hours have the right to enter upon the Premises and Improvements for the purposes of: (1) inspecting the same; (2) confirming the performance by Lessee of its obligations under this Lease; (3) doing any other act which the Port may be obligated or have the right to perform under this Lease, or reasonably related thereto; and (4) for any other lawful purpose. Such inspections shall be made only at a mutually agreeable time to

all parties except in cases of emergency or pursuant to Section 4.8.1.

4.8.1 Environmental Inspection: The Port reserves the right to inspect the Lessee's and Lessee's subtenants' management of Hazardous Substances, as defined in Section 6.3, on the Premises at any time and from time to time without notice to the Lessee or subtenant. If the Port at any time during the term of this Lease, or any extension thereof has reason to believe that the Lessee or Lessee's subtenant(s) are managing Hazardous Substances in a manner that may allow contamination of any portion of the Premises, the Port may require the Lessee to furnish to the Port, at the Lessee's sole expense, an environmental audit or an environmental assessment with respect to the matters of concern to the Port. The Port shall have the right to approve the company or individual conducting said audit and the audit procedures and shall be given an original copy of the results. Lessee shall cooperate with all such requests.

Section 4.9 - Hazardous Substances Spills and Releases: Lessee shall immediately notify the Port upon becoming aware of: (1) any leak, spill, release or disposal of a Hazardous Substance, as defined in Section 6.3, on, under or adjacent to the Premises or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to the Lessee or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations, or ordinances with respect to the Premises or activities on the Premises.

4.9.1 In the event of a leak, spill or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, Lessee shall immediately undertake all emergency response necessary to contain, clean up and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substances is eliminated. The Port shall have the right to approve all investigatory, remedial and removal

procedures and the company(ies) and/or individual(s) conducting said procedures. Within thirty days following completion of such investigatory, remedial and/or removal action, Lessee shall provide the Port with a certification acceptable to the Port that all such contamination has been eliminated as required by federal, state, or local law or regulations.

## ARTICLE V. - PORT OBLIGATIONS AND WARRANTIES

Section 5.1 - Maintenance: Except for Lessee's maintenance obligations as described in Section 4.2 and Lessee's obligations to repair damage caused by its acts or failure to act on the Premises, the Port shall be responsible for maintenance of the exterior walls and roof areas of the Premises, maintenance of the exterior utility systems to the service connection points inside the Premises, and the overhead crane in Building 10, Bay 1.. Any and all maintenance and repair work not specifically described herein as the responsibility of the Port shall be the responsibility of the Lessee.

### Section 5.2 - Delivery:

5.2.1 Lessee shall have the right to possession of the Premises as of the date of the term hereof. Should the Port be unable to deliver possession of the Premises on the date fixed for commencement of the term, the Lessee shall owe no rent until notice from the Port tendering possession to the Lessee. The Port shall have no liability to the Lessee for delay in delivering possession, nor shall such delay extend the term of this Lease in any manner.

5.2.2 In the event the Port shall permit the Lessee to occupy the Premises prior to the occupancy date herein set forth, such occupancy shall be subject to all the provisions of this Lease.

Section 5.3 - Port's Warranty of Ownership: The Port warrants that it is the owner of the Premises and has the right to lease said Premises under the terms of this Lease. Subject to the Lessee performing all obligations of this Lease, the Lessee's possession of the Premises will not

be disturbed by the Port or anyone lawfully claiming by, through or under the Port and the Port will defend the Lessee's right to quiet enjoyment of the Premises from disturbance by anyone lawfully claiming by, through or under the Port.

Section 5.4 - Condition of Premises: The Port makes no warranties or representations regarding the condition or available lawful uses of the Premises. The Lessee has inspected and accepts the Premises in an "as is" condition upon taking possession, and the Port shall have no liability to the Lessee for any damage or injury caused by the condition of the Premises.

#### ARTICLE VI. - LIABILITY, INDEMNITY, INSURANCE, DAMAGE AND DESTRUCTION

Section 6.1 - Liability: The Port shall not be liable to the Lessee for damage to person or property resulting from the negligence of a co-tenant or anyone else other than the Port, or for any damage to person or property resulting from any condition of the Premises or other cause, including but not limited to damage by water, not resulting from the negligence of the Port. Lessee understands that the Premises are located within a ship repair yard where large vessels are repaired, sandblasted, and spray painted and such activities may create noise, odors, dusts, paint oversprays and sandblast grit. Lessee acknowledges these risks, assumes the risks for damages caused by such risks, and releases the Port from liability therefore.

Section 6.2 - General Indemnity: Lessee covenants and agrees to indemnify and hold harmless the Port, its commissioners, directors, officers, agents, and employees from and against any and all actual or potential liability, claims, demands, damages, expenses, fees (including attorneys', accountants', and paralegal fees), fines, penalties, suits, proceedings, actions, and causes of action (collectively "Costs") which may be imposed upon or incurred by the Port due to the acts or omissions of any person or entity whatsoever (excluding only the willful acts or gross negligence of the Port), and which: (1) arise from or are in any way connected with Lessee's use, occupation, management or control of the Premises whether or not due to Lessee's



act or omission and whether or not occurring on the Premises; or (2) result from any breach, violation, or nonperformance by Lessee of any of its obligations under this Lease.

Section 6.3 - Hazardous Substances Indemnity: In addition to the indemnity provided in Section 6.2 above, Lessee agrees to indemnify, hold harmless, and defend the Port from and against all Costs (as defined below) incurred by the Port or assessed against the Port under Environmental Laws (as defined below), which Costs arise out of, or are in connection with, the actual or alleged use, generation, treatment, handling, storage, discharge, transportation, or disposal of Hazardous Substances (as defined below), including any actual or alleged spill, leak or other release. As used in this Section 6.3:

(a) "Costs" shall include, but not be limited to: (i) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (ii) the cost, expense or loss to the Port of and injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (iii) all expenses of evaluation, testing, analysis relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (v) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses; and (vi) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

(b) "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules, and ordinances now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances or relating to the protection of human health, safety or the environment, including but not limited

to, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. Ch. 6901 et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. Ch. 9601, et seq.); the Toxic Substances Control Act (15 U.S.C. Ch. 2601, et seq.); Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499, October 17, 1986); the Solid Waste Disposal Act (42 U.S.C. Ch. 3251, et seq.); the Federal Insecticide, Fungicide and Rodenticide Act/Pesticide Act (7 U.S.C. Ch. 13 et seq.); the Safe Drinking Water Act (44 U.S.C. Ch. 300 (f) et seq.); the Clean Air Act (42 U.S.C. Ch. 7401 et seq.); the Federal Water Pollution Control Act/Clean Water Act (33 U.S.C. Ch. 1251 et seq.); the Oil Pollution Control Act of 1990 (33 U.S.C. Ch. 2761 et seq.); the Oregon Revised Statutes relating to community information on hazardous waste reduction (ORS 453.307 et seq.); toxic use reduction and hazardous waste reduction (ORS 465.003 et seq.); environmental cleanup of hazardous substances, hazardous wastes, and oil contamination (ORS 465.200 et seq.); notice of environmental hazards (ORS 466.360 et seq.); use of PCBs (ORS 466.505 et seq.); spill response and cleanup of hazardous materials and oil (ORS 466.605 et seq.); underground storage tanks (ORS 466.705 et seq.); penalties for noncompliance (ORS 466.880 et seq.); water pollution control (ORS 468.691 et seq.); oil spills (ORS 468.780 et seq.); asbestos abatement (ORS 468.875 et seq.); any similar or equivalent laws; and any implementing laws, regulations, rules, and ordinances.

(c) "Hazardous Substances" shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants as are defined or designed as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, and urea formaldehyde, and any other substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.

Promptly upon written notice from the Port or from any governmental entity, Lessee shall remove from the Premises (including without limitation the soil or water table thereof), at its own cost and expense, all Hazardous Substances for which Lessee is liable under the terms of this Lease, whether in existence prior to the commencement date of this Lease or thereafter, and shall restore the Premises to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations. Any costs incurred by or assessed against the Port shall be paid by Lessee promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is duly owing and so notifies the Lessee. As used in this Paragraph, "Premises" shall be deemed to include the soil and water table thereof.

Section 6.4 - Duty to Defend: Lessee shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Sections 6.2 and 6.3 which may be brought against the Port or in which the Port may impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.

Section 6.5 - Insurance:

6.5.1 The Lessee shall maintain an occurrence form commercial general and automobile liability insurance policy or policies including a fire legal liability endorsement for the protection of Lessee and the Port, its commissioners, directors, officers, servants, and employees, insuring the Lessee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of the Lessee on or from the Premises with insurance of not less than \$2,000,000 combined single limit.

6.5.2 If Lessee has any employees on the Premises, Lessee shall maintain in force Workers' Compensation insurance, including coverage for Employer's Liability and, if



applicable, The Longshoremen's and Harbor Workers' Compensation Act.

6.5.3 All insurance shall name the Port, its commissioners, officers, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by Lessee.

6.5.4 The Lessee shall furnish to the Port a certificate(s) of insurance evidencing the date, amount, and type of insurance that has been procured pursuant to this Lease. All policies of insurance shall remain in full force during the term hereof and shall provide for not less than 30 (thirty) days written notice to the Port and the Lessee before such policies may be revised, non renewed, or canceled. Upon request, the Lessee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Lease.

6.5.5 The Port shall have the right to review the coverage and limits of insurance required herein from time to time. In the event the Port determines that such limits should be modified, the Port will provide 30 days notice to the Lessee of such determination and the Lessee shall, if the coverage is expanded and/or limits are increased, modify its coverage to comply with the new limits and provide the Port with an updated certificate.

Section 6.6 - Waiver of Subrogation: Except as limited in this Section 6.6, the Port and the Lessee agree that each waives any right of action that it may later acquire against the other party to this Lease for loss or damage to that party's property, or to property in which the party may have an interest, to the extent that such loss is covered by any insurance policy or policies and to the extent that proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the loss or damage. This waiver of subrogation shall not extend to any applicable deductible under such policy or policies.

## ARTICLE VII. - TERMINATION

Section 7.1 - Termination by the Port: The Port shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

Section 7.2 - Termination by Lessee: The Lessee shall be entitled to terminate this Lease, or possession of the Premises under this Lease as provided herein and as otherwise provided by law.

Section 7.3 - Duties on Termination: Upon termination of the Lease, or termination of possession for any reason, the Lessee shall deliver all keys to the Port and surrender the Premises and improvements in good condition. Alterations, including but not limited to electrical systems, constructed by the Lessee with permission from the Port shall not be removed, unless the terms of permission for the alteration so require, but shall be restored to the original condition. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which the Lessee is responsible shall be completed to the latest practical date prior to such surrender.

Section 7.4 - Title to Improvements: Subject to the provisions of Section 7.5, upon termination of this Lease by the passage of time or for any reason, the Port shall have the option to either require removal of any or all Improvements within 90 days after the expiration of the Lease at the Lessee's expense or shall have the option to take title to any or all such structures, installations, and Improvements.

Section 7.5 - Fixtures:

7.5.1 Upon termination of this Lease for any reason, any or all fixtures placed upon the Premises during the Lease Term, or any extension thereof, other than the Lessee's trade fixtures, shall, at the Port's option, become the property of the Port. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures and machinery and equipment installed by Lessee or Lessee's subtenants shall remain the property of the Lessee or Lessee's subtenants if placed on the Premises by the Lessee or Lessee's subtenants. At or before the termination of this Lease,

Lessee, at its expense, shall remove from the Premises any or all of Lessee's property required Lessee to be removed under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such property. Any items of Lessee's property which remain on the Premises after the termination of this Lease in violation of this Section 7.5 may, at the option of the Port, be deemed abandoned. The Port shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to Lessee therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand.

7.5.2 If the Port so elects, Lessee shall remove any or all fixtures which would otherwise remain the property of the Port, and shall repair any physical damage resulting from the removal. If Lessee fails to remove such fixtures, the Port may do so and charge the cost to Lessee with interest at 10 percent per annum from the date of expenditure. Lessee shall remove all furnishings, furniture and trade fixtures which remain the property of Lessee. If Lessee fails to do so, this shall be an abandonment of the property, and the Port may retain the property and all rights of Lessee with respect to it shall cease or, by notice in writing given to Lessee within twenty days after removal was required, the Port may elect to hold Lessee to his obligation of removal. If the Port elects to require Lessee to remove, the Port may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to the Port for the cost of removal, transportation to storage, and storage, with interest at the Port's then current rate on all such expenses from the date of expenditure by the Port.

7.5.3 The time for removal of any property or fixtures which the Lessee is required to remove from the Premises upon termination shall be as follows: (1) on or before the date the Lease terminates as provided herein; or (2) within 30 days after notice from the Port requiring such removal where the property to be removed is a fixture which the Lessee is not required to remove except after such notice by the Port, and such date would fall after the date on which the Lessee would be required to remove other property.

Section 7.6 - Environmental Audit: The Port may, at or near the expiration of this Lease by time or other termination, require the Lessee to conduct, at its cost, an environmental audit of the Premises acceptable to the Port to determine if any environmental contamination exists on the Premises. The Port shall have the right to approve the audit procedures and the company or individual conducting said audit and shall be given an original copy of the results. Lessee shall provide to the Port a supplemental update report as of the last day of the Lease Term. The Lessee shall promptly remedy any contamination revealed by such audit in accordance with the then applicable regulations prior to the expiration of the Lease Term. Lessee, upon termination of the Lease for any reason other than expiration of time, shall conduct the environmental audit as required by this Section. The Port, if necessary, will grant Lessee a Permit of Entry for such purpose. In the event the Lessee fails to promptly remedy the contamination, the Port shall have the right to remedy such contamination and charge the Lessee all such costs. The Lessee agrees to pay to Port such costs within 30 days after receipt of invoice from the Port, such right to be in addition to any other remedy available to the Port as provided herein, at law, or by equity.

7.6.1 Until such time as Lessee has fulfilled all the requirements of Section 7.6 above, the Port may, at the Port's option, treat Lessee as a holdover tenant and all provisions pursuant to Section 7.6 shall apply.

7.6.2 If the Lessee does not conduct said audit as required herein, the Port may, at its sole option, complete said audit at the Lessee's expense. Until said audit and any remedial actions as required to restore the Premises to an acceptable condition are completed, the Lessee shall not be released from any liability for such costs.

## ARTICLE VIII. - DEFAULT

Section 8.1 - Events of Default: The following shall be events of default:

8.1.1 Default in Rent: Failure of the Lessee to pay any rent or other charge as provided herein within 10 days after it is due. Lessee's liability to the Port for default shall



survive termination of this Lease.

8.1.2 Default in Other Covenants: Failure of the Lessee to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within thirty days after written notice by the Port specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty day period, this provision shall be complied with if the Lessee begins correction of the default within the thirty day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 Insolvency: To the extent permitted by the United States Bankruptcy Code, insolvency of the Lessee; an assignment by the Lessee for the benefit of creditors; the filing by the Lessee of a voluntary petition in bankruptcy; an adjudication that the Lessee is bankrupt or the appointment of a receiver of the properties of the Lessee and the receiver is not discharged within thirty days; the filing of an involuntary petition of bankruptcy and failure of the Lessee to secure a dismissal of the petition within thirty days after filing; attachment of or the levying of execution on the leasehold interest and failure of the Lessee to secure discharge of the attachment or release of the levy of execution within ten days.

8.1.4 Failure to Occupy: Failure of the Lessee for 30 days or more to occupy the premises for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease.

8.1.5 Correction of Emergency Lessee fails to immediately commence correction and control of an emergency upon notice from the Port. As used herein, "Emergency" shall mean any activity, cause or effect under the control or direction of Lessee, its employees, agents, invitees, guests, or subcontractors involving the health, safety, or general welfare of persons or property.

#### Section 8.2 - Remedies on Default:

8.2.1 In the event of a default under the provisions of Section 8.1.1, 8.1.2, 8.1.3, 8.1.4, and 8.1.5 the Port at its option may terminate the Lease and at any time may exercise any

other remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance. In addition to remedies provided herein, in the event an Emergency, as defined in Section 8.1.5, is not brought under control to the reasonable satisfaction of the Port, the Port may remedy, cure, or bring the Emergency under control without written notice and charge the Lessee all costs associated with such action. No termination of this Lease pursuant to this Section 8.2 shall relieve Lessee of its liabilities and obligations under this Lease, and any damages shall survive any such termination.

8.2.2 Suit(s) or action(s) for the recovery of the rents and other amounts and damages, or for the recovery of possession may be brought by the Port, from time to time, at the Port's election, and nothing in this Lease will be deemed to require the Port to await the date on which the Lease Term expires. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by landlord of any such rights or remedies will not preclude the simultaneous or later exercise by landlord of any other such rights or remedies. All such rights and remedies are nonexclusive.

## ARTICLE IX. - GENERAL PROVISIONS

### Section 9.1 - Assignment and Sublease:

9.1.1 This Lease is personal to the Lessor and the Lessee. Except as provided herein, no part of the Premises nor any interest in this Lease may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conveyed or conferred on any third person by any other means, without the prior written consent of the Port. Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers by operation of law. If the Lessee is a corporation, this

provision shall apply to any sale of a controlling interest in the stock of the corporation.

9.1.2 Consent in one instance shall not prevent this provision from applying to a subsequent instance.

9.1.3 In determining whether to consent to sublease, the Port may consider any factor, including the following factors: financial ability; business experience; intended use; value of sublease or assignment. The Port may required increased rental to compensate for additional value prior to consent.

9.1.4 Without limiting the foregoing, the Lessee shall be permitted to enter into subleases with the following entities without the Port's prior written consent, provided that the use of the Premises shall remain subject to the limits on use set out in Section 1.2.1 and all other provisions of this Lease shall remain applicable to any portion of the Premises subleased: a) labor or management shipyard training or apprenticeship committees; b) Shipyard Taft-Hartley Training Trusts.

Section 9.2 - Non waiver: Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

Section 9.3 - Attorney's Fees: If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

Section 9.4 - Law of Oregon: This Lease shall be governed by the laws of the State of Oregon. To the extent applicable, the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein verbatim.



Section 9.5 - Adherence to Law: The Lessee shall adhere to all applicable Federal, State, and local laws, rules, regulations, and ordinances, including but not limited to (1) laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning Worker's Compensation, and minimum and prevailing wage requirements; (2) laws, rules, regulations and policies relative to occupational safety and health, (3) all federal, state, regional and local laws, environmental laws: and(4) all ordinances and rules adopted by Port Commission and all rules and regulations adopted by the Port's Executive Director or the Executive Director's designee.

9.5.1 Lessee shall not use or allow the use of the Premises or any part thereof for any unlawful purpose or in violation of any certificate of occupancy, any certificate of compliance, or of any other certificate, law, statute, ordinance, or regulation covering or affecting the use of the Premises or any part thereof. Lessee shall not permit any act to be done or any condition to exist on the Premises or any part thereof which may be hazardous, which may constitute a nuisance, or which may void or make voidable any policy of insurance in force with respect to the Premises.

9.5.2 The Lessee shall promptly provide to the Port copies of all notices or other communications between the Lessee and any governmental entity which relate to the Lessee's noncompliance or alleged noncompliance with any law, ordinance, regulation, condition, or other applicable requirement lawfully imposed by any agency, governmental body, or quasi-governmental body having jurisdiction over the Lessee's use of the Premises.

9.5.3 Lessee shall obtain, and promptly advise the Port of receipt of all federal, state, or local governmental approvals or permits required by law or regulation for any activity or construction that Lessee may undertake on the Premises. Lessee shall provide the Port with copies of all such approvals and permits received by Lessee.

9.5.4 Any subleases approved by the Port as provided in this Lease shall contain a provision substantially similar to the terms of this Section 9.5 or incorporating such terms into the sublease.

Section 9.6 - Time of Essence: Time is of the essence of each and every covenant and condition of this Lease.

Section 9.7 - Warranty of Authority: The individuals executing this Agreement warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.

Section 9.8 - Headings: The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

Section 9.9 - Consent of Port:

9.9.1 Subject to the provisions of Section 9.1, whenever consent, approval or direction by the Port is required under the terms contained herein, all such consent, approval, or direction shall be received in writing from an authorized representative of The Port of Portland.

9.9.2 If Lessee requests the Port's consent or approval pursuant to any provision of the Lease and the Port fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable, it being intended the Lessee's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases in which the Port has in fact acted unreasonably and has expressly agreed in writing not unreasonably to withhold its consent or may not unreasonably withhold its consent as a matter of law.

Section 9.10 - Notices: All notices required under this Lease shall be deemed to be properly served if served personally or sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the Contracts Administration Manager, Portland Ship Repair Yard, Post

Office Box 3529, Portland, Oregon 97208, or served personally at 5555 N. Channel Ave., Bldg. 50, Portland, Oregon, 97217, and to the Lessee at Portland Shipyards Training Center, Inc., Attention: Brian Severns, President, 3645 SE 32nd Ave., Portland, OR 97202. Date of Service of such notice is date such notice is personally served or deposited in a post office of the United States Post Office Department, postage prepaid.

Section 9.11 - Modification: Any modification of the Lease shall be mutually agreed upon and reduced to writing and shall not be effective until signed by the parties hereto.

Section 9.12 - No Benefit to Third Parties: The Port and the Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

Section 9.13 - Admittance: The Port shall not be liable for the consequences of admitting by pass-key or refusing to admit to said Premises the Lessee or any of the Lessee's agents or employees or other persons claiming the right of admittance.

Section 9.14 - Regulations: The Port, its Executive Director, or the Executive Director's designee, may, from time to time, adopt and enforce rules and regulations with respect to the use of the Premises and/or use of the PSRY, which Lessee agrees to observe and obey.

Section 9.15 - Partial Invalidity: If any provision of this Lease or the application thereof to any person or circumstance is at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 9.16 - Survival: All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, and all covenants which by their terms are to survive, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

Section 9.17 - Entire Agreement: It is understood and agreed that this instrument contains the entire Agreement between the parties hereto. It is further understood and agreed by the Lessee that the Port and the Port's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by the lessee against the Port for, and the Port shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other oral agreement with the Port being expressly waived by the Lessee.

IN WITNESS HEREOF, the parties hereto have subscribed their names hereto the year and date first written above.

LESSEE

By Brian D. Seaman

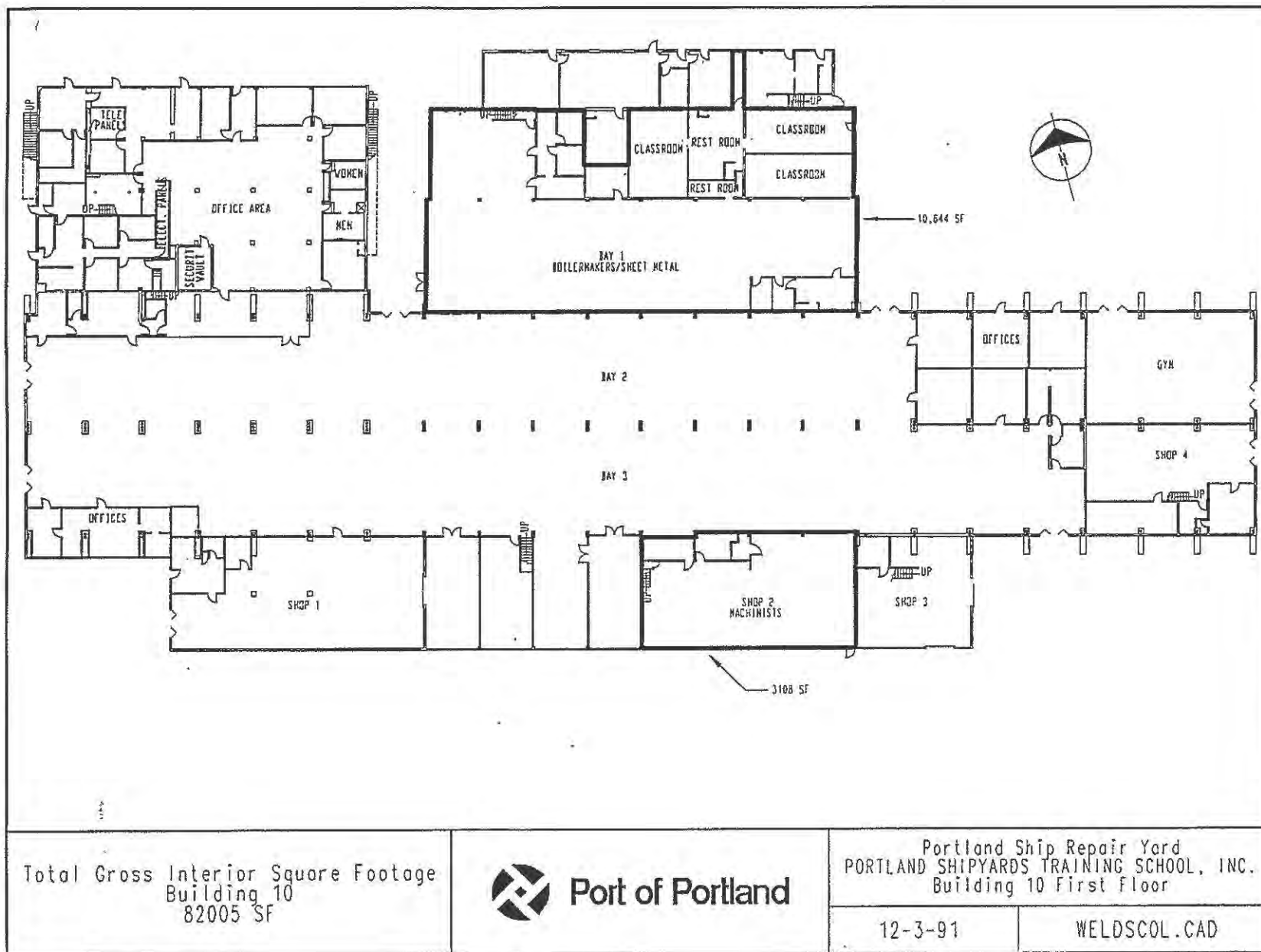
By Jim West

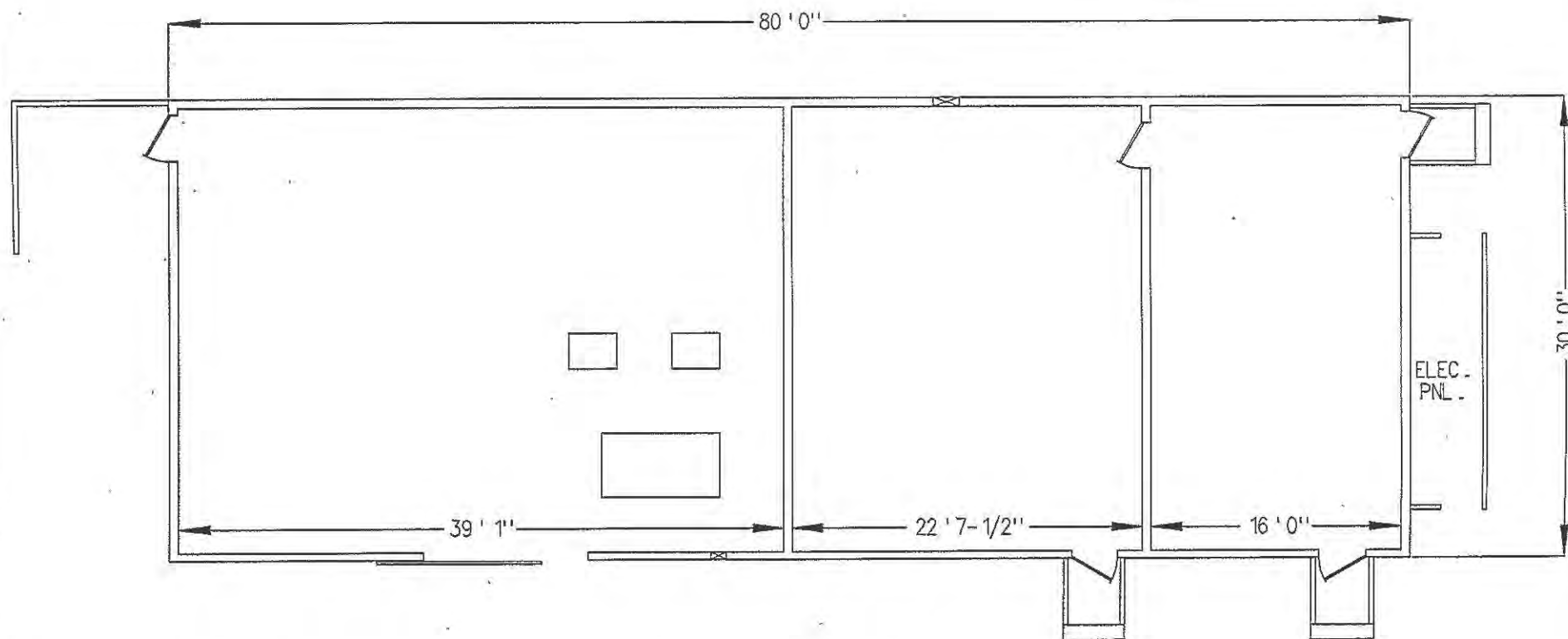
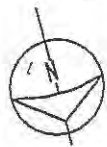
THE PORT OF PORTLAND

By John Thompson  
Executive Director

APPROVED AS TO LEGAL  
SUFFICIENCY

[Signature]  
Counsel for The Port of Portland





TOTAL AREA : 2,400sf



Port of Portland

PORTLAND SHIP REPAIR YARD  
BUILDING 6  
LEASE PLAN

10-29-92

BL6 .CAD 1/1

PSY100003020

EXHIBIT A.2



LEASE OF IMPROVED SPACE

BETWEEN THE

PORT OF PORTLAND

AND

THERMAL SERVICES, INC.



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MONTH-TO-MONTH  
LEASE OF IMPROVED SPACE

THIS LEASE, dated as of the 14<sup>th</sup> day of February 1994, is entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (hereinafter referred to as "Port"), and Thermal Services, Inc., a corporation organized under the laws of the State of Washington (hereinafter referred to as "Lessee"), for lease of certain described Premises located at the Portland Ship Yard, Swan Island ("PSY").

ARTICLE I. - AGREEMENT TO LEASE, DESCRIPTION OF PREMISES

Section 1.1 - Description of Premises: The Port leases to Lessee, and Lessee leases from the Port, on the terms and conditions stated herein, the Premises consisting of approximately 640 square feet of office and storage space located in the east end of Building 4 Annex (hereinafter referred to as "Premises") as shown on Exhibit A, attached hereto and made a part hereof, and 4 parking spaces. Upon construction or installation of additional improvements approved by the Port as provided in this Lease, in, under or upon the Premises (collectively "Improvements"), such Improvement(s) shall become a part of the Premises, except to the extent specifically excluded under the terms of this Lease.

Section 1.2 - Use of Premises:

1.2.1 Lessee shall use the Premises only for the following purpose(s): offices and work room in support of Lessee's thermal mechanical insulation business and parking of 4

company vehicles. No sandblasting or spray painting may be permitted on the Premises, nor shall paints, thinners or solvents be stored on the Premises.

1.2.2 No other use may be made of the Premises without the written approval of the Port. Except as a necessary and incidental use in conjunction with the use authorized for the Premises pursuant to Section 1.2.1 above, no use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of Hazardous Substances as defined in Section 6.3 below. Under no circumstances shall any use be made of, or conduct occur on, the Premises which would cause the Premises, or any part thereof, or the Building, Improvements, or the facility of which they are a part, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any Environmental Law as defined in Section 6.3 below.

1.2.3 The Port shall have the option, but shall not be required to, request the Lessee to provide the Port with a list of all materials and activities which are or foreseeably will occur on the Premises which might constitute an environmental liability. Under no circumstances shall the Port be liable for failure to request or update said list.

1.2.4 In no event shall Lessee store, handle, transport, dispose, or treat any Hazardous Substances on the Premises which are generated by or from cleanup, removal, or remediation operations or activities from third party sources outside PSY.

1.2.5 In no event shall the Lessee ever permanently or temporarily store the following product categories without the Port's prior written approval, except as specifically authorized by federal, state, or local Environmental Law or regulation:

1. PCBs, PCB contaminated materials, and spill residues containing PCBs.
2. Asbestos, asbestos-contaminated materials, and spill residues containing asbestos.
3. Radioactive materials (as defined by state, federal, and local regulations including but not limited to United States Department of Transportation (US

D.O.T.) classifications, and restrictions as defined in OAR Chapter 333, Division 100-005 (51) or as defined by Oregon Health Division).

4. Explosive materials and flammable solids (US D.O.T. Classification).
5. Poison Gases (Poison A, US D.O.T. classification).
6. Reactive materials (Defined by RCRA characteristic or reactivity).
7. Medical, biological, or infectious waste.

1.2.6 Lessee shall at all times exercise due care in connection with the handling of Hazardous Substances on the Premises and shall not cause or permit Hazardous Substances to be spilled, leaked, disposed of, treated, or otherwise released on the Premises.

1.2.7 Before commencing the use, generation, accumulation, storage, treatment, or other handling of Hazardous Substances on the Premises, Lessee shall provide the Port with copies of all necessary permits, authorizations and notices required by any Environmental Law as described in Section 6.3 herein, with respect to such activities. Lessee shall at all times comply with all Environmental Laws as defined in Section 6.3 herein which are applicable to the Premises or to the Lessee's activities on the Premises.

1.2.8 Lessee shall not in any manner deface or injure the Premises or any portion thereof; or overload the floors; or permit anything to be done upon the Premises which would cause an increase in the Fire Insurance rating to the building; or commit any nuisance in or about the Premises; or use or permit the use of the Premises for lodging or sleeping purposes or for any illegal purposes. Lessee shall comply at Lessee's own cost and expense with all orders, notices, regulations, or requirements of any municipality, state, or other governmental authority respecting the use of said Premises.

### Section 1.3 - Appurtenant Rights:

1.3.1 Lessee, its customers, agents, representatives, suppliers, and invitees and subcontractors authorized to be operating in the Yard shall have the non-exclusive right to use the Common Areas, such right to be in common with others to whom the Port has granted



or may grant such similar right. The term "Common Areas," as used herein, shall mean the roadways, pedestrian walkways, alleyways, driveways, delivery areas, trash removal areas, and any other areas, except for berth and drydock lay down areas, where such areas have been designated by the Port as areas to be used by tenants of the Port or those having Facility Agreements in common with other tenants and users of the Port, provided that nothing stated herein shall prohibit the Port from barring from Port property any person or entity which fails to comply with applicable laws, ordinances, rules and regulations including those adopted by the Port Commission and those adopted by the Executive Director or the Executive Director's designee.

1.3.2 In addition to any other rights granted by law, the Port and its Executive Director, or the Executive Director's designee, reserve the following specific rights with respect to the Common Areas:

1.3.2.1 To establish reasonable rules and regulations for the use of said Common Areas;

1.3.2.2 To use or permit the use of such Common Areas by others to whom the Port may grant or may have granted such rights in such manner as the Port may from time to time so grant;

1.3.2.3 To close all or any portion of the Common Areas to make repairs or changes, to prevent a dedication of the Common Areas or the accrual of any rights to any person or the public, or to discourage unpermitted use of the Common Areas;

1.3.2.4 To construct additional buildings or to alter or remove buildings or other improvements in the Common Areas and to change the layout of such Common Areas, including the right to add to or subtract from their shape and size or to change their location;

1.3.2.5 To exercise any of the Port's governmental powers over the Common Areas.

## ARTICLE II. - TERM

Section 2.1 - Term: The term of this Lease shall commence on February 14, 1994 and continue month to month until terminated by either party upon thirty days' written notice or unless otherwise terminated under the provisions hereof.

## ARTICLE III. - RENTAL

Section 3.1 - Basic Rent: The Lessee shall pay, in advance, to the Port as rent the sum of \$432.00 per month, as Basic Rent. Basic Rent is based upon the following: 640 square feet of office and storage space at \$0.50 per square foot per month, 4 parking spaces at \$12.00 per space per month, and \$64.00 per month for Port-provided utilities described in Section 4.5 of this Lease. Lessee shall pay Basic Rent for the first and last months upon the execution of this Lease.

Section 3.2 - Time and Place of Payments: Lessee shall pay the Port the Basic Rent which shall be due and payable on the first day of each month, said payments to be delinquent if not paid when due. In the event the Lease commences after the first day of a month, the Basic Rent for the first month shall be prorated based on the number of days in the month being prorated.

3.2.1 Payment shall be to the Port at The Port of Portland, Post Office Box 5095, Portland, Oregon 97208, or such other place as the Port may designate. All amounts not paid by the Lessee when due shall bear a delinquency charge at the rate of 18% per annum. The delinquency charge on overdue accounts is subject to periodic adjustment to reflect the Port's then current rate on overdue accounts.

Section 3.3 - Acceptance of Late Rent: The Port shall be entitled, at its sole and complete discretion, to either accept or reject a tender of payment of Basic Rent which is not paid when due. In the event the Port elects to accept a tender of payment of Basic Rent after the time when such payment is due, the Port may do so without thereby waiving any default based upon the failure of Lessee to make such payment when due and without waiving Lessee's continuing obligation to make such payments when required under the terms of this Lease. Lessee hereby acknowledges that this constitutes a waiver by Lessee of any argument that by accepting a late payment of Basic Rent, the Port has waived any default which is based upon such late payment or has waived Lessee's continuing obligation to make such payments when and as required by the terms of this Lease.

#### ARTICLE IV. - LESSEE'S OTHER OBLIGATIONS

Section 4.1 - Construction of Improvements/Alterations: Lessee shall demolish, at its own cost and expense, the plywood partition wall located within the Premises. Such work shall not be commenced without notice to the Port, and shall be conducted under the supervision and to the satisfaction of the Port. The Lessee shall make no other construction, alteration, or changes on or to the Premises without the prior written consent of the Port. At least thirty days prior to any approved construction, alteration, or changes upon the Premises or Improvements, Lessee shall submit to the Port architectural and mechanical final plans and specifications, site-use plan, and architectural rendering thereof and shall not commence any construction until it has received the Port's written approval. All plans for construction, alteration, or changes shall be signed by an architect or engineer licensed in the State of Oregon.

4.1.1 No such work shall be undertaken until Lessee has procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations required with respect to the work. Procurement of such permits

and authorizations shall be subsequent to Lessee's obtaining Port approval pursuant to Section 4.1.

4.1.2 All work shall be performed in a good and workmanlike manner, in conformance to all laws and regulations, and, in the case of alterations or additions to existing Improvements, shall be of such quality and type that, when completed, the value and utility of the Improvements which were changed or altered shall be not less than the value and utility of such Improvements immediately before such change or alteration. All work shall be prosecuted with reasonable dispatch.

4.1.3 Thirty days after the completion of any work under this Section 4.1, Lessee shall deliver to the Port complete and fully detailed "AS-BUILT" drawings of the completed Improvements prepared by an architect licensed in the State of Oregon.

Section 4.2 - Maintenance: Except for the Port maintenance responsibilities provided in Section 5.1 herein, the Lessee shall keep and maintain the Premises and Improvements of any kind, which may be erected, installed, or made thereon by the Lessee or the Port, in good and substantial repair and condition and shall promptly make all necessary repairs thereto at Lessee's sole expense. Lessee shall be responsible at its own cost and expense for the maintenance of the interior of the Premises and Improvements including, but not limited to, electric lines and fixtures, flooring, partitions, walls, and ceilings. Lessee shall also be responsible for maintenance of the exterior doors and windows. The Lessee shall provide at, the Lessee's expense, proper containers and removal service for trash and garbage and shall keep the Premises free and clear of rubbish, debris, and litter at all times.

Section 4.3 - Taxes: Unless exempt, the Lessee agrees to pay all lawful taxes and assessments which during the term hereof or any extension may become a lien or which may be levied by the state, county, city, or any other tax-levying body upon the Premises or Improvements, upon any taxable interest by Lessee acquired in this Lease, or any taxable

possessory right which Lessee may have in or to the Premises or the Improvements thereon by reason of its occupancy thereof, as well as all taxes on all taxable property, real or personal, owned by the Lessee in or about said Premises. Upon making such payments, the Lessee shall give to the Port a copy of the receipts and vouchers showing such payment. The Lessee understands that Port property is exempt from property taxation until leased to a taxable entity. In the event the term of this Lease or any extension thereof shall end after June 30 of any year, the Lessee shall be responsible for payment of property taxes for the entire tax year without proration or, in the event of any change in property tax law, for any taxes due under such law.

Section 4.4 - Liens: The Lessee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with the Lessee's consent to be furnished to or for the Lessee in, upon, or about the Premises or Improvements, which may be secured by any mechanic's, materialmen's, or other lien against the Premises or Improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Lessee may in good faith contest any mechanics or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require the Lessee to procure a payment bond in the amount of the contested lien.

Section 4.5 - Utilities: The Lessee shall promptly pay any charges for telephone, and all other charges for utilities which may be furnished to the Premises or Improvements at the request of or for the benefit of Lessee, except for lighting, heating, electricity, and water, which shall be provided by the Port and paid for by Lessee as provided in Section 3.1 of this Lease.



4.5.1 Lessee shall not, without the Port's consent, operate or install any electrical equipment or operate or install any machinery or mechanical device on said Premises other than that normal to office use. In no event shall Lessee overload the electrical circuits from which the Lessee obtains current.

Section 4.6 - Advertisement Signs: Subject to the provisions hereof, the Lessee shall have the right to install or cause to be installed appropriate signs on the Premises to advertise the nature of its business. The cost for installation and operation of such signs shall be borne by the Lessee. The Lessee shall not erect, install, nor permit to be erected, installed or operated upon the Premises herein any sign or other advertising device without having first obtained the Port's written consent thereto, which shall not be unreasonably withheld, as to size, construction, location, and general appearance. All such installations shall be in accordance with the Portland Ship Yard Signing Standards as adopted by the Port from time to time.

Section 4.7 - Safety Requirements:

4.7.1 The Lessee shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. The Lessee shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for the Lessee in any way connected with the conduct of the Lessee pursuant to this Lease.

4.7.2 The Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and to that end shall provide and maintain such fire suppression and other fire protection equipment as may be required pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises.

Section 4.8 - Access to Premises: Except as provided in Section 4.8.1, the Port shall at all times during ordinary business hours have the right to enter upon the Premises and Improvements for the purposes of: (1) inspecting the same; (2) confirming the performance by Lessee of its obligations under this Lease; (3) doing any other act which the Port may be obligated or have the right to perform under this Lease, or reasonably related thereto; and (4) for any other lawful purpose. Such inspections shall be made only at a mutually agreeable time to all parties except in cases of emergency or pursuant to Section 4.8.1.

4.8.1 Environmental Inspection: The Port reserves the right to inspect the Lessee's and Lessee's subtenants' management of Hazardous Substances, as defined in Section 6.3, on the Premises at any time and from time to time without notice to the Lessee or subtenant. If the Port at any time during the term of this Lease or any extension thereof has reason to believe that the Lessee or Lessee's subtenant(s) are managing Hazardous Substances in a manner that may allow contamination of any portion of the Premises, the Port may require the Lessee to furnish to the Port, at the Lessee's sole expense, an environmental audit or an environmental assessment with respect to the matters of concern to the Port. The Port shall have the right to approve the company or individual conducting said audit and the audit procedures and shall be given an original copy of the results. Lessee shall cooperate with all such requests.

Section 4.9 - Hazardous Substances Spills and Releases: Lessee shall immediately notify the Port upon becoming aware of: (1) any leak, spill, release or disposal of a Hazardous Substance, as defined in Section 6.3, on, under or adjacent to the Premises or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to the Lessee or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation

of any federal, state, or local laws, regulations, or ordinances with respect to the Premises or activities on the Premises.

4.9.1 In the event of a leak, spill or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, Lessee shall immediately undertake all emergency response necessary to contain, clean up and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substances is eliminated. The Port shall have the right to approve all investigatory, remedial and removal procedures and the company(ies) and/or individual(s) conducting said procedures. Within thirty days following completion of such investigatory, remedial and/or removal action, Lessee shall provide the Port with a certification acceptable to the Port that all such contamination has been eliminated as required by federal, state, or local law or regulations.

#### ARTICLE V. - PORT OBLIGATIONS AND WARRANTIES

Section 5.1 - Maintenance: Except for Lessee's maintenance obligations as described in Section 4.2 and Lessee's obligations to repair damage caused by its acts or failure to act on the Premises, the Port shall be responsible for maintenance of the exterior walls and roof areas of the Premises, and maintenance of the exterior utility systems to the service connection points inside the Premises. Any and all maintenance and repair work not specifically described herein as the responsibility of the Port shall be the responsibility of the Lessee.

Section 5.2 - Delivery:

5.2.1 Lessee shall have the right to possession of the Premises as of the date of the term hereof. Should the Port be unable to deliver possession of the Premises on the date fixed for commencement of the term, the Lessee shall owe no rent until notice from the Port

tendering possession to the Lessee. The Port shall have no liability to the Lessee for delay in delivering possession, nor shall such delay extend the term of this Lease in any manner.

5.2.2 In the event the Port shall permit the Lessee to occupy the Premises prior to the occupancy date herein set forth, such occupancy shall be subject to all the provisions of this Lease.

Section 5.3 - Port's Warranty of Ownership: The Port warrants that it is the owner of the Premises and has the right to lease said Premises under the terms of this Lease. Subject to the Lessee performing all obligations of this Lease, the Lessee's possession of the Premises will not be disturbed by the Port or anyone lawfully claiming by, through or under the Port and the Port will defend the Lessee's right to quiet enjoyment of the Premises from disturbance by anyone lawfully claiming by, through or under the Port.

Section 5.4 - Condition of Premises: The Port makes no warranties or representations regarding the condition or available lawful uses of the Premises. The Lessee has inspected and accepts the Premises in an "as is" condition upon taking possession, and the Port shall have no liability to the Lessee for any damage or injury caused by the condition of the Premises.

#### ARTICLE VI. - LIABILITY, INDEMNITY, INSURANCE, DAMAGE AND DESTRUCTION

Section 6.1 - Liability: The Port shall not be liable to the Lessee for damage to person or property resulting from the negligence of a co-tenant or anyone else other than the Port, or for any damage to person or property resulting from any condition of the Premises or other cause, including but not limited to damage by water, not resulting from the negligence of the Port. Lessee understands that the Premises are located within a ship repair yard where large vessels are repaired, sandblasted, and spray painted and such activities may create noise,



odors, dusts, paint oversprays and sandblast grit. Lessee acknowledges these risks, assumes the risks for damages caused by such risks, and releases the Port from liability therefore.

Section 6.2 - General Indemnity: Lessee covenants and agrees to indemnify and hold harmless the Port, its commissioners, directors, officers, agents, and employees from and against any and all actual or potential liability, claims, demands, damages, expenses, fees (including attorneys', accountants', and paralegal fees), fines, penalties, suits, proceedings, actions, and causes of action (collectively "Costs") which may be imposed upon or incurred by the Port due to the acts or omissions of any person or entity whatsoever (excluding only the willful acts or gross negligence of the Port), and which: (1) arise from or are in any way connected with Lessee's use, occupation, management or control of the Premises whether or not due to Lessee's act or omission and whether or not occurring on the Premises; or (2) result from any breach, violation, or nonperformance by Lessee of any of its obligations under this Lease.

Section 6.3 - Hazardous Substances Indemnity: In addition to the indemnity provided in Section 6.2 above, Lessee agrees to indemnify, hold harmless, and defend the Port from and against all Costs (as defined below) incurred by the Port or assessed against the Port under Environmental Laws (as defined below), including any actual or alleged spill, leak or other release. As used in this Section 6.3:

(a) "Costs" shall include, but not be limited to: (i) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (ii) the cost, expense or loss to the Port of and injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (iii) all expenses of evaluation, testing, analysis relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable



Environmental Laws; (v) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses; and (vi) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

(b) "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules, and ordinances now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances (as defined below) or relating to the protection of human health, safety or the environment, including but not limited to, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. Ch. 6901 et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. Ch. 9601, et seq.); the Toxic Substances Control Act (15 U.S.C. Ch. 2601, et seq.); Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499, October 17, 1986); the Solid Waste Disposal Act (42 U.S.C. Ch. 3251, et seq.); the Federal Insecticide, Fungicide and Rodenticide Act/Pesticide Act (7 U.S.C. Ch. 13 et seq.); the Safe Drinking Water Act (42 U.S.C. Ch. 300 (f) et seq.); the Clean Air Act (42 U.S.C. Ch. 7401 et seq.); the Federal Water Pollution Control Act/Clean Water Act (33 U.S.C. Ch. 1251 et seq.); the Oil Pollution Control Act of 1990 (33 U.S.C. Ch. 2761 et seq.); the Oregon Revised Statutes relating to community information on hazardous waste reduction (ORS 453.307 et seq.); toxic use reduction and hazardous waste reduction (ORS 465.003 et seq.); environmental cleanup of hazardous substances, hazardous wastes, and oil contamination (ORS 465.200 et seq.); notice of environmental hazards (ORS 466.360 et seq.); use of PCBs (ORS 466.505 et seq.); spill response and cleanup of hazardous materials and oil (ORS 466.605 et seq.); underground storage tanks (ORS 466.705 et seq.); penalties for noncompliance (ORS 466.880 et seq.); water pollution control (ORS 468.691 et seq.); oil

spills (ORS 468.780 et seq.); asbestos abatement (ORS 468.875 et seq.); any similar or equivalent laws; and any implementing laws, regulations, rules, and ordinances.

(c) "Hazardous Substances" shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants as are defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, and urea formaldehyde, and any other substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.

Promptly upon written notice from the Port or from any governmental entity, Lessee shall remove from the Premises (including without limitation the soil or water table thereof), at its own cost and expense, all Hazardous Substances for which Lessee is liable under the terms of this Lease or any Environmental Law, whether in existence prior to the commencement date of this Lease or thereafter, and shall restore the Premises to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations. Any costs incurred by or assessed against the Port shall be paid by Lessee promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is duly owing and so notifies the Lessee. As used in this Paragraph, "Premises" shall be deemed to include the soil and water table thereof.

Section 6.4 - Duty to Defend: Lessee shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Sections 6.2 and 6.3 which may be brought against the Port or in which the Port may be

impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.

Section 6.5 - Insurance:

6.5.1 The Lessee shall maintain an occurrence form commercial general and automobile liability insurance policy or policies including a fire legal liability endorsement for the protection of Lessee and the Port, its commissioners, directors, officers, servants, and employees, insuring the Lessee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of the Lessee on or from the Premises with insurance of not less than \$1,000,000 combined single limit.

6.5.2 Lessee shall maintain in force Workers' Compensation insurance, including coverage for Employer's Liability and, if applicable, The Longshoremen's and Harbor Workers' Compensation Act.

6.5.3 All insurance shall name the Port, its commissioners, officers, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by Lessee.

6.5.4 The Lessee shall furnish to the Port a certificate(s) of insurance evidencing the date, amount, and type of insurance that has been procured pursuant to this Lease. All policies of insurance shall remain in full force during the term hereof and shall provide for not less than 30 (thirty) days written notice to the Port and the Lessee before such policies may be revised, non renewed, or canceled. Upon request, the Lessee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Lease.

6.5.5 The Port shall have the right to review the coverage and limits of insurance required herein from time to time. In the event the Port determines that such limits

should be modified, the Port will provide 30 days notice to the Lessee of such determination and the Lessee shall, if the coverage is expanded and/or limits are increased, modify its coverage to comply with the new limits and provide the Port with an updated certificate.

Section 6.6 - Waiver of Subrogation: Except as limited in this Section 6.6, the Port and the Lessee agree that each waives any right of action that it may later acquire against the other party to this Lease for loss or damage to that party's property, or to property in which the party may have an interest, to the extent that such loss is covered by any insurance policy or policies and to the extent that proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the loss or damage. This waiver of subrogation shall not extend to any applicable deductible under such policy or policies.

## ARTICLE VII. - TERMINATION

Section 7.1 - Termination by the Port: The Port shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

Section 7.2 - Termination by Lessee: The Lessee shall be entitled to terminate this Lease, or possession of the Premises under this Lease, as provided herein and as otherwise provided by law.

Section 7.3 - Duties on Termination: Upon termination of the Lease, or termination of possession for any reason, the Lessee shall deliver all keys to the Port and surrender the Premises and Improvements in good condition. Alterations, including but not limited to electrical systems, constructed by the Lessee with permission from the Port shall not be removed, unless the terms of permission for the alteration so require, but shall be restored to the original condition. Depreciation and wear from ordinary use for the purpose for which the



Premises were let need not be restored, but all repair for which the Lessee is responsible shall be completed to the latest practical date prior to such surrender.

Section 7.4 - Title to Improvements: Subject to the provisions of Section 7.5, upon termination of this Lease by the passage of time or for any reason, the Port shall have the option to either require removal of any or all Improvements within 90 days after the expiration of the Lease at the Lessee's expense or shall have the option to take title to any or all such structures, installations, and Improvements.

Section 7.5 - Fixtures:

7.5.1 Upon termination of this Lease for any reason, any or all fixtures placed upon the Premises during the Lease Term, or any extension thereof, other than the Lessee's trade fixtures, shall, at the Port's option, become the property of the Port. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures shall remain the property of the Lessee if placed on the Premises by the Lessee. At or before the termination of this Lease, Lessee, at its expense, shall remove from the Premises any or all of Lessee's property required to be removed under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such property. Any items of Lessee's property which remain on the Premises after the termination of this Lease in violation of this Section 7.5 may, at the option of the Port, be deemed abandoned. The Port shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to Lessee therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand.



7.5.2 If the Port so elects, Lessee shall remove any or all fixtures which would otherwise remain the property of the Port, and shall repair any physical damage resulting from their removal.

7.5.3 The time for removal of any property or fixtures which the Lessee is required to remove from the Premises upon termination shall be as follows: (1) on or before the date the Lease terminates as provided herein; or (2) within 30 days after notice from the Port requiring such removal where the property to be removed is a fixture which the Lessee is not required to remove except after such notice by the Port, and such date would fall after the date on which the Lessee would be required to remove other property.

Section 7.6 - Environmental Audit: The Port may, at or near the expiration of this Lease by time or other termination, require the Lessee to conduct, at its cost, an environmental audit of the Premises acceptable to the Port to determine if any environmental contamination exists on the Premises. The Port shall have the right to approve the audit procedures and the company or individual conducting said audit and shall be given an original copy of the results. Lessee shall provide to the Port a supplemental update report as of the last day of the Lease Term. The Lessee shall promptly remedy any contamination revealed by such audit in accordance with the then applicable regulations prior to the expiration of the Lease Term. Lessee, upon termination of the Lease for any reason other than expiration of time, shall conduct the environmental audit as required by this Section. The Port, if necessary, will grant Lessee a Permit and Right-of-Entry for such purpose. In the event the Lessee fails to promptly remedy the contamination, the Port shall have the right to remedy such contamination and charge the Lessee all such costs. The Lessee agrees to pay to Port such costs within 30 days after receipt of invoice from the Port, such right to be in addition to any other remedy available to the Port as provided herein, at law, or by equity.

7.6.1 If the Lessee does not conduct said audit as required herein, the Port may, at its sole option, complete said audit at the Lessee's expense. Until said audit and any

remedial actions as required to restore the Premises to an acceptable condition are completed, the Lessee shall not be released from any liability for such costs.

## ARTICLE VIII. - DEFAULT

Section 8.1 - Events of Default: The following shall be events of default:

8.1.1 Default in Rent: Failure of the Lessee to pay any rent or other charge as provided herein within 10 days after it is due. Lessee's liability to the Port for default shall survive termination of this Lease.

8.1.2 Default in Other Covenants: Failure of the Lessee to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within thirty days after written notice by the Port specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty day period, this provision shall be complied with if the Lessee begins correction of the default within the thirty day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 Insolvency: To the extent permitted by the United States Bankruptcy Code, insolvency of the Lessee; an assignment by the Lessee for the benefit of creditors; the filing by the Lessee of a voluntary petition in bankruptcy; an adjudication that the Lessee is bankrupt or the appointment of a receiver of the properties of the Lessee and the receiver is not discharged within thirty days; the filing of an involuntary petition of bankruptcy and failure of the Lessee to secure a dismissal of the petition within thirty days after filing; attachment of or the levying of execution on the leasehold interest and failure of the Lessee to secure discharge of the attachment or release of the levy of execution within ten days.

8.1.4 Failure to Occupy: Failure of the Lessee for 30 days or more to occupy the Premises for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease.

8.1.5 Correction of Emergency: Lessee fails to immediately commence correction and control of an emergency upon notice from the Port. As used herein, "Emergency" shall mean any activity, cause or effect under the control or direction of Lessee, its employees, agents, invitees, guests, or subcontractors involving the health, safety, or general welfare of persons or property.

Section 8.2 - Remedies on Default:

8.2.1 In the event of a default under the provisions of Section 8.1.1, 8.1.2, 8.1.3, 8.1.4, and 8.1.5 the Port at its option may terminate this Lease, or terminate possession under this Lease, and at any time may exercise any other remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance. In addition to remedies provided herein, in the event an Emergency, as defined in Section 8.1.5, is not brought under control to the reasonable satisfaction of the Port, the Port may remedy, cure, or bring the Emergency under control without written notice and charge Lessee all costs associated with such action. No termination of this Lease pursuant to this Section 8.2 shall relieve Lessee of its liabilities and obligations under this Lease, and any damages shall survive any such termination.

8.2.2 Suit(s) or action(s) for the recovery of the rents and other amounts and damages, or for the recovery of possession may be brought by the Port, from time to time, at the Port's election, and nothing in this Lease will be deemed to require the Port to await the date on which the Lease Term expires. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Port of any such rights or remedies will not preclude the simultaneous or later exercise by Port of any other such rights or remedies. All such rights and remedies are non-exclusive.

## ARTICLE IX. - GENERAL PROVISIONS

### Section 9.1 - Assignment and Sublease:

9.1.1 This Lease is personal to the Port and the Lessee. Except as provided herein, no part of the Premises nor any interest in this Lease may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conveyed or conferred on any third person by any other means, without the prior written consent of the Port. Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers by operation of law. If the Lessee is a corporation, this provision shall apply to any sale of a controlling interest in the stock of the corporation.

9.1.2 Consent in one instance shall not prevent this provision from applying to a subsequent instance.

9.1.3 In determining whether to consent to sublease, the Port may consider any factor, including the following factors: financial ability; business experience; intended use; value of sublease or assignment. The Port may require increased rental to compensate for additional value prior to consent.

Section 9.2 - Non waiver: Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

Section 9.3 - Attorney's Fees: If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.



Section 9.4 - Law of Oregon: This Lease shall be governed by the laws of the State of Oregon. To the extent applicable, the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein verbatim.

Section 9.5 - Adherence to Law: The Lessee shall adhere to all applicable Federal, State, and local laws, rules, regulations, and ordinances, including but not limited to (1) laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning Workers' Compensation, and minimum and prevailing wage requirements; (2) laws, rules, regulations and policies relative to occupational safety and health, (3) all federal, state, regional and local laws, environmental laws; and (4) all ordinances and rules adopted by Port Commission and all rules and regulations adopted by the Port's Executive Director or the Executive Director's designee.

9.5.1 Lessee shall not use or allow the use of the Premises or any part thereof for any unlawful purpose or in violation of any certificate of occupancy, any certificate of compliance, or of any other certificate, law, statute, ordinance, or regulation covering or affecting the use of the Premises or any part thereof. Lessee shall not permit any act to be done or any condition to exist on the Premises or any part thereof which may be hazardous, which may constitute a nuisance, or which may void or make voidable any policy of insurance in force with respect to the Premises.

9.5.2 The Lessee shall promptly provide to the Port copies of all notices or other communications between the Lessee and any governmental entity which relate to the Lessee's noncompliance or alleged noncompliance with any law, ordinance, regulation, condition, or other applicable requirement lawfully imposed by any agency, governmental body, or quasi-governmental body having jurisdiction over the Lessee's use of the Premises.

9.5.3 Lessee shall obtain, and promptly advise the Port of receipt of all federal, state, or local governmental approvals or permits required by law or regulation for any activity



or construction that Lessee may undertake on the Premises. Lessee shall provide the Port with copies of all such approvals and permits received by Lessee.

9.5.4 Any subleases approved by the Port as provided in this Lease shall contain a provision substantially similar to the terms of this Section 9.5 or incorporating such terms into the sublease.

Section 9.6 - Time of Essence: Time is of the essence of each and every covenant and condition of this Lease.

Section 9.7 - Warranty of Authority: The individuals executing this Agreement warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.

Section 9.8 - Headings: The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

Section 9.9 - Consent of Port:

9.9.1 Subject to the provisions of Section 9.1, whenever consent, approval or direction by the Port is required under the terms contained herein, all such consent, approval, or direction shall be received in writing from an authorized representative of the Port of Portland.

9.9.2 If Lessee requests the Port's consent or approval pursuant to any provision of the Lease and the Port fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable, it being intended the Lessee's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases in which the Port has in

fact acted unreasonably and has expressly agreed in writing not unreasonably to withhold its consent or may not unreasonably withhold its consent as a matter of law.

Section 9.10 - Notices: All notices required under this Lease shall be deemed to be properly delivered if delivered personally or sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the Port at the Port of Portland, Post Office Box 3529, Portland, Oregon 97208, Attn: PSY Contracts Administrator, or delivered personally at 5555 N. Channel Ave., Bldg. 50, Portland, Oregon, 97217, Attn: PSY Contracts Administrator, and to the Lessee at Thermal Services, Inc., 13600 N.E. Clark Rd., Vancouver, WA 98685. Date of delivery of such notice is date such notice is personally delivered or deposited in a post office of the United States Post Office Department, postage prepaid.

Section 9.11 - Modification: Any modification of the Lease shall be mutually agreed upon and reduced to writing and shall not be effective until signed by the parties hereto.

Section 9.12 - No Benefit to Third Parties: The Port and the Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

Section 9.13 - Admittance: The Port shall not be liable for the consequences of admitting by pass-key or refusing to admit to said Premises the Lessee or any of the Lessee's agents or employees or other persons claiming the right of admittance.

Section 9.14 - Regulations: The Port, its Executive Director, or the Executive Director's designee, may, from time to time, adopt and enforce rules and regulations with respect to the use of the Premises and/or use of the PSY, which Lessee agrees to observe and obey.

Section 9.15 - Partial Invalidity: If any provision of this Lease or the application thereof to any person or circumstance is at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 9.16 - Survival: All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, and all covenants which by their terms are to survive, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

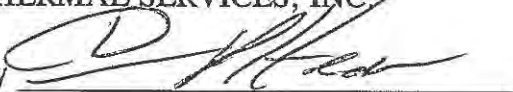
Section 9.17 - Entire Agreement: It is understood and agreed that this instrument contains the entire Agreement between the parties hereto. It is further understood and agreed by the Lessee that the Port and the Port's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Lessee against the Port for, and the Port shall not be liable by reason of, the

breach of any representations or promises not expressly stated in this Agreement, any other oral agreement with the Port being expressly waived by the Lessee.

IN WITNESS HEREOF, the parties hereto have subscribed their names hereto the year and date first written above.

THERMAL SERVICES, INC

By



Printed Name

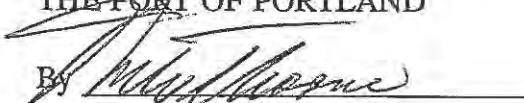
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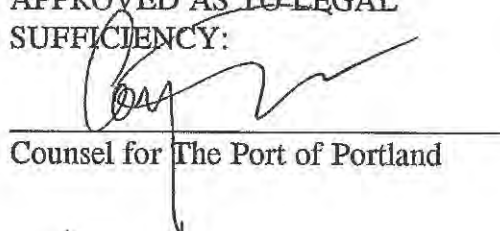


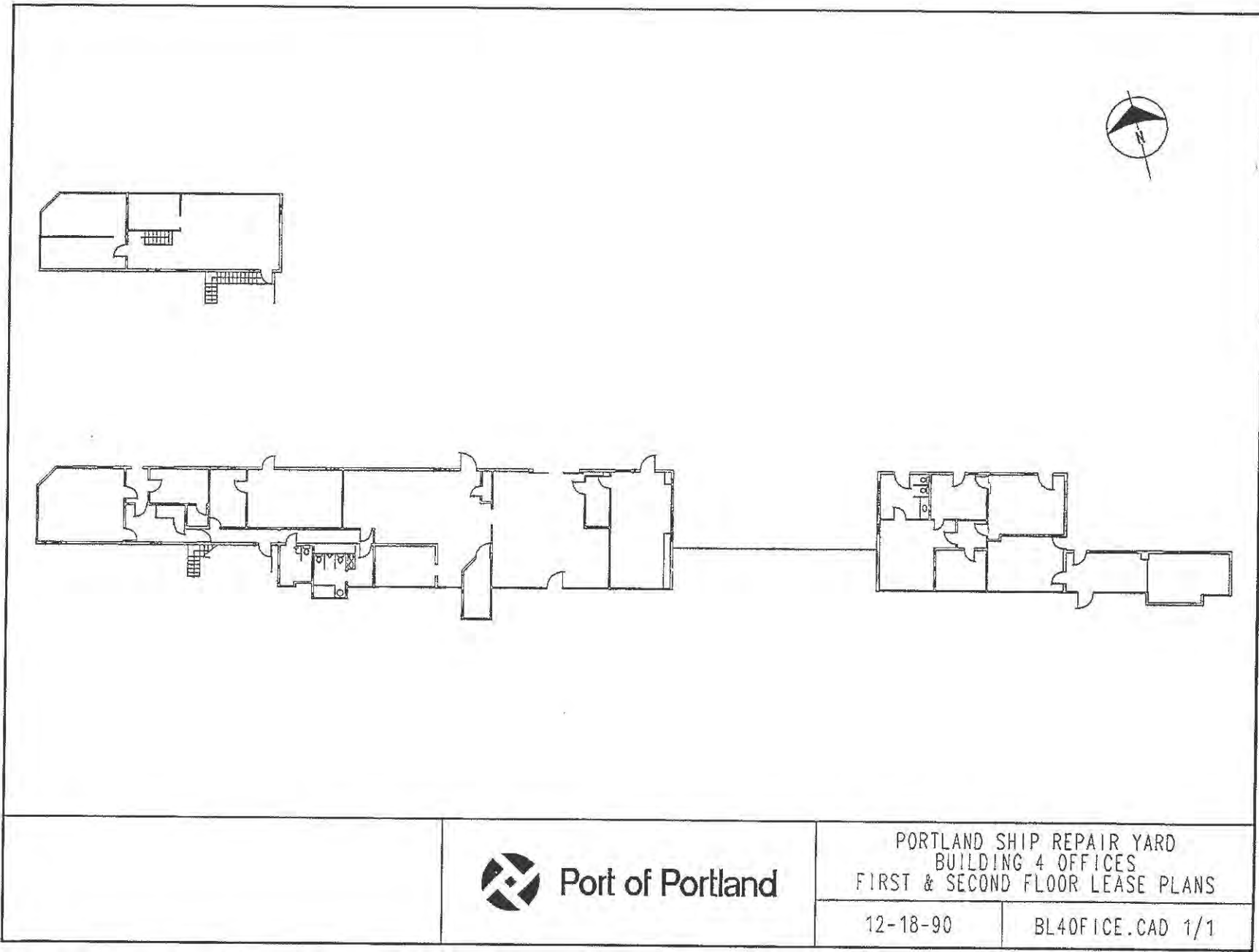
THE PORT OF PORTLAND

By

  
Executive Director

APPROVED AS TO LEGAL  
SUFFICIENCY:

  
Counsel for The Port of Portland





**PORT OF PORTLAND  
PERMIT AND RIGHT-OF-ENTRY  
FOR USE OF BALLAST WATER TREATMENT PLANT  
PORTLAND SHIP YARD**

Date Issued: \_\_\_\_\_

Permit No.: \_\_\_\_\_

**PERMITTEE:**

CET Environmental Services, Inc.  
P.O. Box 83655  
5315 N.W. St. Helens Road  
Portland, OR 97210

Contact: Richard Arrasmith  
Phone: (503) 241-3827

E.P.A. ID No.: ORO001010289

The Port of Portland hereby grants to Permittee the right to enter upon and use the below-described Premises in accordance with the terms and conditions set forth below.

**A. Premises and Permitted Use:** The "Premises" consist of those portions of the Portland Ship Yard ("PSY") over which Permittee must pass to reach the Ballast Water Treatment Plant ("BWTP"). Permittee may use the Premises for the limited purpose of transfer by truck of oily marine ballast water or slops to the BWTP. Port may accept oily marine ballast water or slops only if the material meets the Port's standards for acceptability and the Port has capacity at the BWTP to handle the material. Permittee shall not deliver or attempt to deliver non-marine material to the BWTP. Oily marine ballast water or slops generated outside PSY must be pre-approved by special application to the Port by the company generating the product. **THE PORT RESERVES THE RIGHT TO REFUSE OILY MARINE BALLAST WATER OR SLOPS FOR ANY REASON AND TO REQUIRE A CERTIFICATE OF CHEMICAL ANALYSIS PRIOR TO ACCEPTANCE OF ANY MATERIAL.**

Permittee agrees to comply with all Port policies, procedures, rules and regulations relating to use of the BWTP, including but not limited to rules adopted by the Port's Executive Director or Director of the Portland Ship Yard. Permittee shall furnish its E.P.A. Identification number, a Coast Guard Certificate of Adequacy, and current licenses, permits or inspection certificates for vehicles coming into PSY.

PSY100003052

**B. Term of Permit:** The term of the Permit shall be February 15, 1995 through December 31, 1995, unless terminated as provided herein.

**C. Compensation to be Paid by Permittee:** Permittee shall owe no compensation for use of the BWTP, provided that Permittee acts only as a hauler of oily marine ballast water or slops. The company generating the oily marine ballast water or slops ("Company") will be responsible for payment to the Port for disposal, in accordance with the current PSY Price Schedule rates.

**D. Port's Right to Terminate:** Notwithstanding any provision contained herein, the Port through its authorized representative may terminate this Permit, verbally or in writing, at any time for its convenience or for Permittee's default. Upon notice of termination, the Permittee shall immediately leave the Premises. Permittee's obligations and liability to the Port shall survive termination. Unless waived by the Port, the Permittee shall restore the Premises to its condition at the commencement hereof, ordinary wear and tear excepted.

**E. Indemnity:** Permittee is an independent contractor and agrees to fully indemnify, hold harmless and defend the Port, its commissioners, directors, officers, agents and employees from and against all claims, penalties, actions, damages, injuries, any financial loss or expenses incidental to the investigation and defense thereof, including reasonable attorney's fees, based upon or arising out of the acts or omissions of, or use or occupancy of the Premises by Permittee, its agents, contractors, invitees, employees, or any person or entity acting at the direction or under the control of Permittee.

**F. No Benefit to Third Parties:** The Port and Permittee are the only parties to this Permit and as such are the only parties entitled to enforce its terms. Nothing in this Permit gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

**G. Insurance:** In addition to any special insurance requirements, Permittee shall maintain an occurrence form commercial general and automobile liability insurance policy or policies for the protection of Permittee and the Port, its commissioners, directors, officers, agents, and employees, and insuring Permittee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to this Permit or occasioned by reason of operations of the Permittee on or from the Premises with insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Policies shall be endorsed to provide coverage for sudden and accidental pollution. Such insurance shall name the Port, its commissioners, directors, officers, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by the Permittee. The coverage

provided by this policy shall be primary and any other insurance carried by Port is excess.

Permittee shall maintain in force Workers' Compensation insurance coverage for Employers' Liability and, if applicable, Longshore and Harbor Workers' Compensation Act. If Permittee is a qualified self-insured employer, a copy of Contractor's Certificate of Compliance and a certificate of insurance evidencing excess insurance shall be forwarded to Port upon execution of this Permit.

Permittee shall furnish to the Port a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Permit. All policies of insurance will provide for written notice to the Port and the Permittee before such policies may be revised, nonrenewed, or cancelled. Upon request, Permittee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Permit.

**H. Liens:** The Permittee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with the Permittee's consent to be furnished to or for the Permittee in, upon, or about the Premises or improvements thereon, which may be secured by any mechanic's, materialmen's, or other lien against the Premises or improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Permittee may in good faith contest any mechanic's or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require the Permittee to procure a payment bond in the amount of the contested lien.

**I. Assignment of Interest of Rights:** The Permittee shall not, in any manner, directly or indirectly, by operation of law or otherwise, sublease, assign, transfer or encumber any of Permittee's rights granted by this instrument. Any attempted assignment or transfer shall be void.

**J. Attorney Fees:** If suit or action is instituted in connection with any controversy arising out of this Permit, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

**K. Warranties/Guarantees:** The Permittee acknowledges that it has inspected the Premises and has found them to be completely acceptable and safe for Permittee's intended use. Port makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that Port will not be responsible for any loss, damage or costs which may be incurred by Permittee by reason of any such physical condition.

**L. Compliance With Law:** Permittee shall comply with all applicable state, federal, and local laws, including but not limited to, City of Portland zoning ordinances and laws, rules, regulations, and policies concerning equal opportunity, nondiscrimination, Workers' Compensation, and minimum and prevailing wage requirements, and the rules and regulations adopted by the Port, the Port's Executive Director, or the Executive Director's designee.

**M. Notices:** All notices required under this Permit shall be sent to the addresses set forth below:

CET Environmental Services, Inc.  
5315 N.W. St. Helens Road  
Portland, OR 97210  
Attn: Richard Arrasmith

Port of Portland  
5555 N. Channel Ave., Bldg. 50  
Portland, OR 97217  
Attn: Contracts Administrator

**N. Hazardous Substances:** No use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of Hazardous Substances, as that term is defined in Section O below, except for uses which are incidental to any business conducted on the Premises, the primary purpose of which is not the handling, storage, disposal, transportation, or discharge of Hazardous Substances. All of such uses shall be in strict conformance with all applicable federal, state, or local laws, rules, and regulations, as the same may be amended from time to time.

The Permittee shall immediately notify the Port upon becoming aware of: (1) any leak, spill, release, or disposal of a Hazardous Substance, as defined herein, on, under, or adjacent to the Premises, or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to the Permittee or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations or ordinances with respect to the Premises or activities on the Premises. In the event of a leak, spill, or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, for which Permittee is responsible under this Permit or any law or regulation, the Permittee shall, at its own cost and expense, immediately undertake all emergency response necessary to contain, clean up, and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial, and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substances is eliminated, and the Premises restored to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations, and the Port shall have the right to approve all investigatory, remedial, and removal procedures and the company(ies) and/or individual(s) conducting said procedures. Within 30 days following completion of such investigatory, remedial, and/or removal action, the Permittee shall provide the Port with a certification acceptable to the Port that all such



contamination has been eliminated. Any costs incurred by or assessed against the Port shall be paid by Permittee promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is duly owing and so notifies the Permittee.

**O. Hazardous Waste Indemnity:** In addition to the indemnity provided in Section E above, Permittee agrees to indemnify, hold harmless, and defend the Port and the Port's commissioners, directors, officers, employees, agents, and contractors from and against all Costs (as defined below) incurred or assessed under Environmental Laws (as defined below), which Costs arise out of, are in connection with, or are a result of the acts or omissions of the Permittee, or Permittee's officers, directors, employees, agents, representatives, contractors, invitees or any other person or entity acting by or on behalf of the Permittee:

(A) "Costs" shall include, but not be limited to: (i) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (ii) the cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (iii) all expenses of evaluation, testing, analysis relating to Hazardous Substances (as defined below), including fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (v) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses; and (vi) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

(B) "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules, and ordinances now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances (as defined below) or relate to the protection of health, safety or the environment.

(C) "Hazardous Substances" shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants as are defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include without limitation asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, and urea formaldehyde, and any other substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.

(D) "Premises" shall be deemed to include the soil and water table thereof.



Permittee shall, at its sole expense, defend any and all actions, suits, and proceedings for which Permittee is responsible relating to matters covered by the indemnity set forth in Section O which may be brought against the Port or in which the Port may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.

**P. Security of Oily Marine Ballast Water or Slops:** Permittee shall take all reasonable steps to ensure that nobody will add anything to oily marine ballast water or slops delivered pursuant to this Permit between the time Permittee receives the oily marine ballast water or slops from the Company and the time Permittee delivers it to the BWTP. Reasonable steps shall include but not be limited to locking and sealing tanks on trucks used to transport oily marine ballast water or slops to PSY under this Permit.

**Q. Entire Agreement:** This Permit represents the entire agreement between the parties, and supersedes all prior or contemporaneous agreements or communication, written or oral. No amendment to this Permit shall be effective unless in writing and signed by the parties hereto.

CET Environmental Services, Inc.

  
Signature

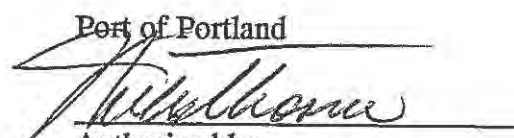
RICHARD E. ARRASMITH  
Typed Name

DIVISION MANAGER  
Title

2/2/95  
Date

12/13/94 i:\brooks\legal\ballast\bwtp\psg25.doc

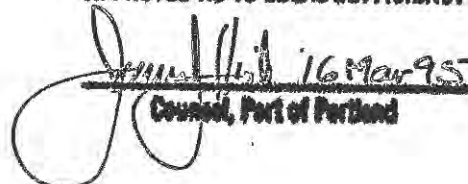
Port of Portland

  
Authorized by

Executive Director

Title

APPROVED AS TO LEGAL SUFFICIENCY

  
16 Mar 95  
Council, Port of Portland

PSY100003057

**PORT OF PORTLAND  
PERMIT AND RIGHT-OF-ENTRY  
FOR USE OF BALLAST WATER TREATMENT PLANT  
PORTLAND SHIP YARD**

Date Issued: 1/1/95

Permit No.: P00195

**PERMITTEE:**

Foss Environmental Services, Inc.

P. O. Box 83357

Portland, OR 97283-0357

Contact: Russ Aker

Phone: (503) 283-1150

E.P.A. ID No.: ORD070730395

The Port of Portland hereby grants to Permittee the right to enter upon and use the below-described Premises in accordance with the terms and conditions set forth below.

**A. Premises and Permitted Use:** The "Premises" consist of those portions of the Portland Ship Yard ("PSY") over which Permittee must pass to reach the Ballast Water Treatment Plant ("BWTP"). Permittee may use the Premises for the limited purpose of transfer by truck of oily marine ballast water or slops to the BWTP. Port may accept oily marine ballast water or slops only if the material meets the Port's standards for acceptability and the Port has capacity at the BWTP to handle the material. Permittee shall not deliver or attempt to deliver non-marine material to the BWTP. Oily marine ballast water or slops generated outside PSY must be pre-approved by special application to the Port by the company generating the product. **THE PORT RESERVES THE RIGHT TO REFUSE OILY MARINE BALLAST WATER OR SLOPS FOR ANY REASON AND TO REQUIRE A CERTIFICATE OF CHEMICAL ANALYSIS PRIOR TO ACCEPTANCE OF ANY MATERIAL.**

Permittee agrees to comply with all Port policies, procedures, rules and regulations relating to use of the BWTP, including but not limited to rules adopted by the Port's Executive Director or Director of the Portland Ship Yard. Permittee shall furnish its E.P.A. Identification number, a Coast Guard Certificate of Adequacy, and current licenses, permits or inspection certificates for vehicles coming into PSY.

**B. Term of Permit:** The term of the Permit shall be January 1, 1995 through December 31, 1995, unless terminated as provided herein.

**C. Compensation to be Paid by Permittee:** Permittee shall owe no compensation for use of the BWTP, provided that Permittee acts only as a hauler of oily marine ballast water or slops.

The company generating the oily marine ballast water or slops ("Company") will be responsible for payment to the Port for disposal, in accordance with the current PSY Price Schedule rates.

**D. Port's Right to Terminate:** Notwithstanding any provision contained herein, the Port through its authorized representative may terminate this Permit, verbally or in writing, at any time for its convenience or for Permittee's default. Upon notice of termination, the Permittee shall immediately leave the Premises. Permittee's obligations and liability to the Port shall survive termination. Unless waived by the Port, the Permittee shall restore the Premises to its condition at the commencement hereof, ordinary wear and tear excepted.

**E. Indemnity:** Permittee is an independent contractor and agrees to fully indemnify, hold harmless and defend the Port, its commissioners, directors, officers, agents and employees from and against all claims, penalties, actions, damages, injuries, any financial loss or expenses incidental to the investigation and defense thereof, including reasonable attorney's fees, based upon or arising out of the acts or omissions of, or use or occupancy of the Premises by Permittee, its agents, contractors, invitees, employees, or any person or entity acting at the direction or under the control of Permittee.

**F. No Benefit to Third Parties:** The Port and Permittee are the only parties to this Permit and as such are the only parties entitled to enforce its terms. Nothing in this Permit gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

**G. Insurance:** In addition to any special insurance requirements, Permittee shall maintain an occurrence form commercial general and automobile liability insurance policy or policies for the protection of Permittee and the Port, its commissioners, directors, officers, agents, and employees, and insuring Permittee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to this Permit or occasioned by reason of operations of the Permittee on or from the Premises with insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Policies shall be endorsed to provide coverage for sudden and accidental pollution. Such insurance shall name the Port, its commissioners, directors, officers, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by the Permittee. The coverage provided by this policy shall be primary and any other insurance carried by Port is excess.

Permittee shall maintain in force Workers' Compensation insurance coverage for Employers' Liability and, if applicable, Longshore and Harbor Workers' Compensation Act. If Permittee is a qualified self-insured employer, a copy of Contractor's Certificate of Compliance and a certificate of insurance evidencing excess insurance shall be forwarded to Port upon execution of this Permit.

Permittee shall furnish to the Port a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Permit. All policies of insurance will provide for written notice to the Port and the Permittee before such policies may be revised,

nonrenewed, or cancelled. Upon request, Permittee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Permit.

**H. Liens:** The Permittee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with the Permittee's consent to be furnished to or for the Permittee in, upon, or about the Premises or improvements thereon, which may be secured by any mechanic's, materialmen's, or other lien against the Premises or improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Permittee may in good faith contest any mechanic's or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require the Permittee to procure a payment bond in the amount of the contested lien.

**I. Assignment of Interest of Rights:** The Permittee shall not, in any manner, directly or indirectly, by operation of law or otherwise, sublease, assign, transfer or encumber any of Permittee's rights granted by this instrument. Any attempted assignment or transfer shall be void.

**J. Attorney Fees:** If suit or action is instituted in connection with any controversy arising out of this Permit, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

**K. Warranties/Guarantees:** The Permittee acknowledges that it has inspected the Premises and has found them to be completely acceptable and safe for Permittee's intended use. Port makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that Port will not be responsible for any loss, damage or costs which may be incurred by Permittee by reason of any such physical condition.

**L. Compliance With Law:** Permittee shall comply with all applicable state, federal, and local laws, including but not limited to, City of Portland zoning ordinances and laws, rules, regulations, and policies concerning equal opportunity, nondiscrimination, Workers' Compensation, and minimum and prevailing wage requirements, and the rules and regulations adopted by the Port, the Port's Executive Director, or the Executive Director's designee.

**M. Notices:** All notices required under this Permit shall be sent to the addresses set forth below:

Foss Environmental Services, Inc.  
P.O. Box 83357  
Portland, OR 97283-0357  
Attn: Russ Aker

Port of Portland  
5555 N. Channel Ave., Bldg. 50  
Portland, OR 97217  
Attn: Contracts Administrator

**N. Hazardous Substances:** No use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of Hazardous Substances, as that term is defined in Section O below, except for uses which are incidental to any business conducted



on the Premises, the primary purpose of which is not the handling, storage, disposal, transportation, or discharge of Hazardous Substances. All of such uses shall be in strict conformance with all applicable federal, state, or local laws, rules, and regulations, as the same may be amended from time to time.

The Permittee shall immediately notify the Port upon becoming aware of: (1) any leak, spill, release, or disposal of a Hazardous Substance, as defined herein, on, under, or adjacent to the Premises, or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to the Permittee or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations or ordinances with respect to the Premises or activities on the Premises. In the event of a leak, spill, or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, for which Permittee is responsible under this Permit or any law or regulation, the Permittee shall, at its own cost and expense, immediately undertake all emergency response necessary to contain, clean up, and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial, and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substances is eliminated, and the Premises restored to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations, and the Port shall have the right to approve all investigatory, remedial, and removal procedures and the company(ies) and/or individual(s) conducting said procedures. Within 30 days following completion of such investigatory, remedial, and/or removal action, the Permittee shall provide the Port with a certification acceptable to the Port that all such contamination has been eliminated. Any costs incurred by or assessed against the Port shall be paid by Permittee promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is duly owing and so notifies the Permittee.

**O. Hazardous Waste Indemnity:** In addition to the indemnity provided in Section E above, Permittee agrees to indemnify, hold harmless, and defend the Port and the Port's commissioners, directors, officers, employees, agents, and contractors from and against all Costs (as defined below) incurred or assessed under Environmental Laws (as defined below), which Costs arise out of, are in connection with, or are a result of the acts or omissions of the Permittee, or Permittee's officers, directors, employees, agents, representatives, contractors, invitees or any other person or entity acting by or on behalf of the Permittee:

(A) "Costs" shall include, but not be limited to: (i) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (ii) the cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (iii) all expenses of evaluation, testing, analysis relating to Hazardous Substances (as defined below), including fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (v) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and



telephone charges and other expenses; and (vi) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

(B) "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules, and ordinances now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances (as defined below) or relate to the protection of health, safety or the environment.

(C) "Hazardous Substances" shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants as are defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include without limitation asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, and urea formaldehyde, and any other substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.

(D) "Premises" shall be deemed to include the soil and water table thereof.

Permittee shall, at its sole expense, defend any and all actions, suits, and proceedings for which Permittee is responsible relating to matters covered by the indemnity set forth in Section O which may be brought against the Port or in which the Port may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.

**P. Security of Oily Marine Ballast Water or Slops:** Permittee shall take all reasonable steps to ensure that nobody will add anything to oily marine ballast water or slops delivered pursuant to this Permit between the time Permittee receives the oily marine ballast water or slops from the Company and the time Permittee delivers it to the BWTP. Reasonable steps shall include but not be limited to locking and sealing tanks on trucks used to transport oily marine ballast water or slops to PSY under this Permit.

**Q. Entire Agreement:** This Permit represents the entire agreement between the parties, and supersedes all prior or contemporaneous agreements or communication, written or oral. No amendment to this Permit shall be effective unless in writing and signed by the parties hereto.

Foss Environmental Services, Inc.

*Russ Aker*  
Signature

RUSS AKER  
Typed Name

SUPERVISOR  
Title

12/16/94  
Date

12/13/94 i:\brook\legal\brok\port\psg95.doc

Port of Portland

*John M. Thompson*  
Authorized by

Executive Director  
Title

APPROVED AS TO LEGAL SUFFICIENCY

*[Signature]*  
Counsel, Port of Portland

PSY100003063

**PORT OF PORTLAND  
PERMIT AND RIGHT-OF-ENTRY  
FOR USE OF BALLAST WATER TREATMENT PLANT  
PORTLAND SHIP YARD**

Date Issued: \_\_\_\_\_

Permit No.: \_\_\_\_\_

**PERMITTEE:**

Foss Environmental Services, Inc.

P. O. Box 83357

Portland, OR 97283-0357

Contact: Russ Aker

Phone: (503) 283-1150

E.P.A. ID No.: ORD070730395

The Port of Portland hereby grants to Permittee the right to enter upon and use the below-described Premises in accordance with the terms and conditions set forth below.

**A. Premises and Permitted Use:** The "Premises" consist of those portions of the Portland Ship Yard ("PSY") over which Permittee must pass to reach the Ballast Water Treatment Plant ("BWTP"). Permittee may use the Premises for the limited purpose of transfer by truck of oily marine ballast water or slops to the BWTP. Port may accept oily marine ballast water or slops only if the material meets the Port's standards for acceptability and the Port has capacity at the BWTP to handle the material. Permittee shall not deliver or attempt to deliver non-marine material to the BWTP. Oily marine ballast water or slops generated outside PSY must be pre-approved by special application to the Port by the company generating the product.  
**THE PORT RESERVES THE RIGHT TO REFUSE OILY MARINE BALLAST WATER OR SLOPS FOR ANY REASON AND TO REQUIRE A CERTIFICATE OF CHEMICAL ANALYSIS PRIOR TO ACCEPTANCE OF ANY MATERIAL.**

Permittee agrees to comply with all Port policies, procedures, rules and regulations relating to use of the BWTP, including but not limited to rules adopted by the Port's Executive Director or Director of the Portland Ship Yard. Permittee shall furnish its E.P.A. Identification number, a Coast Guard Certificate of Adequacy, and current licenses, permits or inspection certificates for vehicles coming into PSY.

**B. Term of Permit:** The term of the Permit shall be January 1, 1995 through December 31, 1995, unless terminated as provided herein.

**C. Compensation to be Paid by Permittee:** Permittee shall owe no compensation for use of the BWTP, provided that Permittee acts only as a hauler of oily marine ballast water or slops.

The company generating the oily marine ballast water or slops ("Company") will be responsible for payment to the Port for disposal, in accordance with the current PSY Price Schedule rates.

**D. Port's Right to Terminate:** Notwithstanding any provision contained herein, the Port through its authorized representative may terminate this Permit, verbally or in writing, at any time for its convenience or for Permittee's default. Upon notice of termination, the Permittee shall immediately leave the Premises. Permittee's obligations and liability to the Port shall survive termination. Unless waived by the Port, the Permittee shall restore the Premises to its condition at the commencement hereof, ordinary wear and tear excepted.

**E. Indemnity:** Permittee is an independent contractor and agrees to fully indemnify, hold harmless and defend the Port, its commissioners, directors, officers, agents and employees from and against all claims, penalties, actions, damages, injuries, any financial loss or expenses incidental to the investigation and defense thereof, including reasonable attorney's fees, based upon or arising out of the acts or omissions of, or use or occupancy of the Premises by Permittee, its agents, contractors, invitees, employees, or any person or entity acting at the direction or under the control of Permittee.

**F. No Benefit to Third Parties:** The Port and Permittee are the only parties to this Permit and as such are the only parties entitled to enforce its terms. Nothing in this Permit gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

**G. Insurance:** In addition to any special insurance requirements, Permittee shall maintain an occurrence form commercial general and automobile liability insurance policy or policies for the protection of Permittee and the Port, its commissioners, directors, officers, agents, and employees, and insuring Permittee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to this Permit or occasioned by reason of operations of the Permittee on or from the Premises with insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Policies shall be endorsed to provide coverage for sudden and accidental pollution. Such insurance shall name the Port, its commissioners, directors, officers, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by the Permittee. The coverage provided by this policy shall be primary and any other insurance carried by Port is excess.

Permittee shall maintain in force Workers' Compensation insurance coverage for Employers' Liability and, if applicable, Longshore and Harbor Workers' Compensation Act. If Permittee is a qualified self-insured employer, a copy of Contractor's Certificate of Compliance and a certificate of insurance evidencing excess insurance shall be forwarded to Port upon execution of this Permit.

Permittee shall furnish to the Port a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Permit. All policies of insurance will provide for written notice to the Port and the Permittee before such policies may be revised,



nonrenewed, or cancelled. Upon request, Permittee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Permit.

**H. Liens:** The Permittee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with the Permittee's consent to be furnished to or for the Permittee in, upon, or about the Premises or improvements thereon, which may be secured by any mechanic's, materialmen's, or other lien against the Premises or improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Permittee may in good faith contest any mechanic's or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require the Permittee to procure a payment bond in the amount of the contested lien.

**I. Assignment of Interest of Rights:** The Permittee shall not, in any manner, directly or indirectly, by operation of law or otherwise, sublease, assign, transfer or encumber any of Permittee's rights granted by this instrument. Any attempted assignment or transfer shall be void.

**J. Attorney Fees:** If suit or action is instituted in connection with any controversy arising out of this Permit, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

**K. Warranties/Guarantees:** The Permittee acknowledges that it has inspected the Premises and has found them to be completely acceptable and safe for Permittee's intended use. Port makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that Port will not be responsible for any loss, damage or costs which may be incurred by Permittee by reason of any such physical condition.

**L. Compliance With Law:** Permittee shall comply with all applicable state, federal, and local laws, including but not limited to, City of Portland zoning ordinances and laws, rules, regulations, and policies concerning equal opportunity, nondiscrimination, Workers' Compensation, and minimum and prevailing wage requirements, and the rules and regulations adopted by the Port, the Port's Executive Director, or the Executive Director's designee.

**M. Notices:** All notices required under this Permit shall be sent to the addresses set forth below:

Foss Environmental Services, Inc.  
P.O. Box 83357  
Portland, OR 97283-0357  
Attn: Russ Aker

Port of Portland  
5555 N. Channel Ave., Bldg. 50  
Portland, OR 97217  
Attn: Contracts Administrator

**N. Hazardous Substances:** No use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of Hazardous Substances, as that term is defined in Section O below, except for uses which are incidental to any business conducted



on the Premises, the primary purpose of which is not the handling, storage, disposal, transportation, or discharge of Hazardous Substances. All of such uses shall be in strict conformance with all applicable federal, state, or local laws, rules, and regulations, as the same may be amended from time to time.

The Permittee shall immediately notify the Port upon becoming aware of: (1) any leak, spill, release, or disposal of a Hazardous Substance, as defined herein, on, under, or adjacent to the Premises, or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to the Permittee or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations or ordinances with respect to the Premises or activities on the Premises. In the event of a leak, spill, or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, for which Permittee is responsible under this Permit or any law or regulation, the Permittee shall, at its own cost and expense, immediately undertake all emergency response necessary to contain, clean up, and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial, and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substances is eliminated, and the Premises restored to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations, and the Port shall have the right to approve all investigatory, remedial, and removal procedures and the company(ies) and/or individual(s) conducting said procedures. Within 30 days following completion of such investigatory, remedial, and/or removal action, the Permittee shall provide the Port with a certification acceptable to the Port that all such contamination has been eliminated. Any costs incurred by or assessed against the Port shall be paid by Permittee promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is duly owing and so notifies the Permittee.

**O. Hazardous Waste Indemnity:** In addition to the indemnity provided in Section E above, Permittee agrees to indemnify, hold harmless, and defend the Port and the Port's commissioners, directors, officers, employees, agents, and contractors from and against all Costs (as defined below) incurred or assessed under Environmental Laws (as defined below), which Costs arise out of, are in connection with, or are a result of the acts or omissions of the Permittee, or Permittee's officers, directors, employees, agents, representatives, contractors, invitees or any other person or entity acting by or on behalf of the Permittee:

(A) "Costs" shall include, but not be limited to: (i) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (ii) the cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (iii) all expenses of evaluation, testing, analysis relating to Hazardous Substances (as defined below), including fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (v) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and

telephone charges and other expenses; and (vi) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

(B) "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules, and ordinances now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances (as defined below) or relate to the protection of health, safety or the environment.

(C) "Hazardous Substances" shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants as are defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include without limitation asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, and urea formaldehyde, and any other substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.

(D) "Premises" shall be deemed to include the soil and water table thereof.

Permittee shall, at its sole expense, defend any and all actions, suits, and proceedings for which Permittee is responsible relating to matters covered by the indemnity set forth in Section O which may be brought against the Port or in which the Port may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.

**P. Security of Oily Marine Ballast Water or Slops:** Permittee shall take all reasonable steps to ensure that nobody will add anything to oily marine ballast water or slops delivered pursuant to this Permit between the time Permittee receives the oily marine ballast water or slops from the Company and the time Permittee delivers it to the BWTP. Reasonable steps shall include but not be limited to locking and sealing tanks on trucks used to transport oily marine ballast water or slops to PSY under this Permit.



**PORT OF PORTLAND  
PERMIT AND RIGHT-OF-ENTRY  
FOR USE OF BALLAST WATER TREATMENT PLANT  
PORTLAND SHIP YARD**

Date Issued: \_\_\_\_\_

Permit No.: P01594

**PERMITTEE:**

Mar Com Inc.  
3001 S.E. Columbia Way  
Building 41, Suite A  
Vancouver, WA 98661

Contact: Tom Maples  
Phone: (206) 693-9916

E.P.A. ID No.: WA0000113761

The Port of Portland hereby grants to Permittee the right to enter upon and use the below-described Premises in accordance with the terms and conditions set forth below.

**A. Premises and Permitted Use:** The "Premises" consist of those portions of the Portland Ship Yard ("PSY") over which Permittee must pass to reach the Ballast Water Treatment Plant ("BWTP"). Permittee may use the Premises for the limited purpose of transfer by truck of oily marine ballast water or slops to the BWTP. Port may accept oily marine ballast water or slops only if the material meets the Port's standards for acceptability and the Port has capacity at the BWTP to handle the material. Permittee shall not deliver or attempt to deliver non-marine material to the BWTP. Oily marine ballast water or slops generated outside PSY must be pre-approved by special application to the Port by the company generating the product. **THE PORT RESERVES THE RIGHT TO REFUSE OILY MARINE BALLAST WATER OR SLOPS FOR ANY REASON AND TO REQUIRE A CERTIFICATE OF CHEMICAL ANALYSIS PRIOR TO ACCEPTANCE OF ANY MATERIAL.**

Permittee agrees to comply with all Port policies, procedures, rules and regulations relating to use of the BWTP, including but not limited to rules adopted by the Port's Executive Director or Director of the Portland Ship Yard. Permittee shall furnish its E.P.A. Identification number, a Coast Guard Certificate of Adequacy, and current licenses, permits or inspection certificates for vehicles coming into PSY.

**B. Term of Permit:** The term of the Permit shall be April 1, 1994 through December 31, 1994, unless terminated as provided herein.

**C. Compensation to be Paid by Permittee:** Permittee shall owe no compensation for use of the BWTP, provided that Permittee acts only as a hauler of oily marine ballast water or slops.

PSY100003070



The company generating the oily marine ballast water or slops ("Company") will be responsible for payment to the Port for disposal, in accordance with the current PSY Price Schedule rates.

**D. Port's Right to Terminate:** Notwithstanding any provision contained herein, the Port through its authorized representative may terminate this Permit, verbally or in writing, at any time for its convenience or for Permittee's default. Upon notice of termination, the Permittee shall immediately leave the Premises. Permittee's obligations and liability to the Port shall survive termination. Unless waived by the Port, the Permittee shall restore the Premises to its condition at the commencement hereof, ordinary wear and tear excepted.

**E. Indemnity:** Permittee is an independent contractor and agrees to fully indemnify, hold harmless and defend the Port, its commissioners, directors, officers, agents and employees from and against all claims, penalties, actions, damages, injuries, any financial loss or expenses incidental to the investigation and defense thereof, including reasonable attorney's fees, based upon or arising out of the acts or omissions of, or use or occupancy of the Premises by Permittee, its agents, contractors, invitees, employees, or any person or entity acting at the direction or under the control of Permittee.

**F. No Benefit to Third Parties:** The Port and Permittee are the only parties to this Permit and as such are the only parties entitled to enforce its terms. Nothing in this Permit gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

**G. Insurance:** In addition to any special insurance requirements, Permittee shall maintain an occurrence form commercial general and automobile liability insurance policy or policies for the protection of Permittee and the Port, its commissioners, directors, officers, agents, and employees, and insuring Permittee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to this Permit or occasioned by reason of operations of the Permittee on or from the Premises with insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Policies shall be endorsed to provide coverage for sudden and accidental pollution. Such insurance shall name the Port, its commissioners, directors, officers, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by the Permittee. The coverage provided by this policy shall be primary and any other insurance carried by Port is excess.

Permittee shall maintain in force Workers' Compensation insurance coverage for Employers' Liability and, if applicable, Longshore and Harbor Workers' Compensation Act. If Permittee is a qualified self-insured employer, a copy of Contractor's Certificate of Compliance and a certificate of insurance evidencing excess insurance shall be forwarded to Port upon execution of this Permit.

Permittee shall furnish to the Port a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Permit. All policies of insurance will provide for written notice to the Port and the Permittee before such policies may be revised,



nonrenewed, or cancelled. Upon request, Permittee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Permit.

**H. Liens:** The Permittee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with the Permittee's consent to be furnished to or for the Permittee in, upon, or about the Premises or improvements thereon, which may be secured by any mechanic's, materialmen's, or other lien against the Premises or improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Permittee may in good faith contest any mechanic's or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require the Permittee to procure a payment bond in the amount of the contested lien.

**I. Assignment of Interest of Rights:** The Permittee shall not, in any manner, directly or indirectly, by operation of law or otherwise, sublease, assign, transfer or encumber any of Permittee's rights granted by this instrument. Any attempted assignment or transfer shall be void.

**J. Attorney Fees:** If suit or action is instituted in connection with any controversy arising out of this Permit, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

**K. Warranties/Guarantees:** The Permittee acknowledges that it has inspected the Premises and has found them to be completely acceptable and safe for Permittee's intended use. Port makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that Port will not be responsible for any loss, damage or costs which may be incurred by Permittee by reason of any such physical condition.

**L. Compliance With Law:** Permittee shall comply with all applicable state, federal, and local laws, including but not limited to, City of Portland zoning ordinances and laws, rules, regulations, and policies concerning equal opportunity, nondiscrimination, Workers' Compensation, and minimum and prevailing wage requirements, and the rules and regulations adopted by the Port, the Port's Executive Director, or the Executive Director's designee.

**M. Notices:** All notices required under this Permit shall be sent to the addresses set forth below:

Mar Com Inc.  
3001 S.E. Columbia Way  
Building 41, Suite A  
Vancouver, WA 98661  
Attn: Tom Maples

Port of Portland  
5555 N. Channel Ave., Bldg. 50  
Portland, OR 97217

Attn: Contracts Administrator

**N. Hazardous Substances:** No use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of Hazardous Substances, as that term

is defined in Section O below, except for uses which are incidental to any business conducted on the Premises, the primary purpose of which is not the handling, storage, disposal, transportation, or discharge of Hazardous Substances. All of such uses shall be in strict conformance with all applicable federal, state, or local laws, rules, and regulations, as the same may be amended from time to time.

The Permittee shall immediately notify the Port upon becoming aware of: (1) any leak, spill, release, or disposal of a Hazardous Substance, as defined herein, on, under, or adjacent to the Premises, or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to the Permittee or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations or ordinances with respect to the Premises or activities on the Premises. In the event of a leak, spill, or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, for which Permittee is responsible under this Permit or any law or regulation, the Permittee shall, at its own cost and expense, immediately undertake all emergency response necessary to contain, clean up, and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial, and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substances is eliminated, and the Premises restored to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations, and the Port shall have the right to approve all investigatory, remedial, and removal procedures and the company(ies) and/or individual(s) conducting said procedures. Within 30 days following completion of such investigatory, remedial, and/or removal action, the Permittee shall provide the Port with a certification acceptable to the Port that all such contamination has been eliminated. Any costs incurred by or assessed against the Port shall be paid by Permittee promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is duly owing and so notifies the Permittee.

**O. Hazardous Waste Indemnity:** In addition to the indemnity provided in Section E above, Permittee agrees to indemnify, hold harmless, and defend the Port and the Port's commissioners, directors, officers, employees, agents, and contractors from and against all Costs (as defined below) incurred or assessed under Environmental Laws (as defined below), which Costs arise out of, are in connection with, or are a result of the acts or omissions of the Permittee, or Permittee's officers, directors, employees, agents, representatives, contractors, invitees or any other person or entity acting by or on behalf of the Permittee:

(A) "Costs" shall include, but not be limited to: (i) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (ii) the cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (iii) all expenses of evaluation, testing, analysis relating to Hazardous Substances (as defined below), including fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (v) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and

paralegal fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses; and (vi) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

(B) "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules, and ordinances now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances (as defined below) or relate to the protection of human health, safety or the environment, including but not limited to, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901 et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, et seq.); the Toxic Substances Control Act (15 U.S.C. §2601, et seq.); Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499, October 17, 1986); the Solid Waste Disposal Act (42 U.S.C. §3251, et seq.); the Federal Insecticide, Fungicide and Rodenticide Act/Pesticide Act (7 U.S.C. §13 et seq.); the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.); the Clean Air Act (42 U.S.C. §7401 et seq.); the Federal Water Pollution Control Act/Clean Water Act (33 U.S.C. §1251 et seq.); the Oil Pollution Control Act of 1990 (33 U.S.C. §2761 et seq.); the Oregon Revised Statutes relating to community information on hazardous waste reduction (ORS 453.307 et seq.); toxic use reduction and hazardous waste reduction (ORS 465.003 et seq.); environmental cleanup of hazardous substances, hazardous wastes, and oil contamination (ORS 465.200 et seq.); notice of environmental hazards (ORS 466.360 et seq.); treatment, storage, and disposal of hazardous waste and PCBs (ORS 466.005 et seq.); use of PCBs (ORS 466.505 et seq.); spill response and cleanup of hazardous materials and oil (ORS 466.605 et seq.); underground storage tanks (ORS 466.705 et seq.); penalties for noncompliance (ORS 466.880 et seq.); water pollution control (ORS 468.691 et seq.); oil spills (ORS 468.780 et seq.); asbestos abatement (ORS 468.875 et seq.); any similar or equivalent laws; and any implementing laws, regulations, rules, and ordinances.

(C) "Hazardous Substances" shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants as are defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include without limitation asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, and urea formaldehyde, and any other substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.

(D) "Premises" shall be deemed to include the soil and water table thereof.

Permittee shall, at its sole expense, defend any and all actions, suits, and proceedings for which Permittee is responsible relating to matters covered by the indemnity set forth in Section O which may be brought against the Port or in which the Port may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.

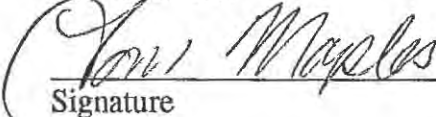


**P. Security of Oily Marine Ballast Water or Slops:** Permittee shall take all reasonable steps to ensure that nobody will add anything to oily marine ballast water or slops delivered pursuant to this Permit between the time Permittee receives the oily marine ballast water or slops from the Company and the time Permittee delivers it to the BWTP. Reasonable steps shall include but not be limited to locking and sealing tanks on trucks used to transport oily marine ballast water or slops to PSY under this Permit.

**Q. Entire Agreement:** This Permit represents the entire agreement between the parties, and supersedes all prior or contemporaneous agreements or communication, written or oral. No amendment to this Permit shall be effective unless in writing and signed by the parties hereto.

Mar Com Inc.

Port of Portland

  
Signature

\_\_\_\_\_  
Authorized by

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title

  
Title

  
Date

03/11/94 - I:\BROOKS\LEGAL\FERMIT\BOILERPLABWTP.doc



**PORT OF PORTLAND  
PERMIT AND RIGHT-OF-ENTRY  
FOR USE OF BALLAST WATER TREATMENT PLANT  
PORTLAND SHIP YARD**

Date Issued: 1/1/95  
Permit No.: P00595

**PERMITTEE:**

Mar Com Inc.  
3001 S.E. Columbia Way  
Building 41, Suite A  
Vancouver, WA 98661

Contact: Tom Maples  
Phone: (206) 693-9916

E.P.A. ID No.: WA0000113761

The Port of Portland hereby grants to Permittee the right to enter upon and use the below-described Premises in accordance with the terms and conditions set forth below.

**A. Premises and Permitted Use:** The "Premises" consist of those portions of the Portland Ship Yard ("PSY") over which Permittee must pass to reach the Ballast Water Treatment Plant ("BWTP"). Permittee may use the Premises for the limited purpose of transfer by truck of oily marine ballast water or slops to the BWTP. Port may accept oily marine ballast water or slops only if the material meets the Port's standards for acceptability and the Port has capacity at the BWTP to handle the material. Permittee shall not deliver or attempt to deliver non-marine material to the BWTP. Oily marine ballast water or slops generated outside PSY must be pre-approved by special application to the Port by the company generating the product. **THE PORT RESERVES THE RIGHT TO REFUSE OILY MARINE BALLAST WATER OR SLOPS FOR ANY REASON AND TO REQUIRE A CERTIFICATE OF CHEMICAL ANALYSIS PRIOR TO ACCEPTANCE OF ANY MATERIAL.**

Permittee agrees to comply with all Port policies, procedures, rules and regulations relating to use of the BWTP, including but not limited to rules adopted by the Port's Executive Director or Director of the Portland Ship Yard. Permittee shall furnish its E.P.A. Identification number, a Coast Guard Certificate of Adequacy, and current licenses, permits or inspection certificates for vehicles coming into PSY.

**B. Term of Permit:** The term of the Permit shall be January 1, 1995 through December 31, 1995, unless terminated as provided herein.

**C. Compensation to be Paid by Permittee:** Permittee shall owe no compensation for use of the BWTP, provided that Permittee acts only as a hauler of oily marine ballast water or slops.

The company generating the oily marine ballast water or slops ("Company") will be responsible for payment to the Port for disposal, in accordance with the current PSY Price Schedule rates.

**D. Port's Right to Terminate:** Notwithstanding any provision contained herein, the Port through its authorized representative may terminate this Permit, verbally or in writing, at any time for its convenience or for Permittee's default. Upon notice of termination, the Permittee shall immediately leave the Premises. Permittee's obligations and liability to the Port shall survive termination. Unless waived by the Port, the Permittee shall restore the Premises to its condition at the commencement hereof, ordinary wear and tear excepted.

**E. Indemnity:** Permittee is an independent contractor and agrees to fully indemnify, hold harmless and defend the Port, its commissioners, directors, officers, agents and employees from and against all claims, penalties, actions, damages, injuries, any financial loss or expenses incidental to the investigation and defense thereof, including reasonable attorney's fees, based upon or arising out of the acts or omissions of, or use or occupancy of the Premises by Permittee, its agents, contractors, invitees, employees, or any person or entity acting at the direction or under the control of Permittee.

**F. No Benefit to Third Parties:** The Port and Permittee are the only parties to this Permit and as such are the only parties entitled to enforce its terms. Nothing in this Permit gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

**G. Insurance:** In addition to any special insurance requirements, Permittee shall maintain an occurrence form commercial general and automobile liability insurance policy or policies for the protection of Permittee and the Port, its commissioners, directors, officers, agents, and employees, and insuring Permittee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to this Permit or occasioned by reason of operations of the Permittee on or from the Premises with insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Policies shall be endorsed to provide coverage for sudden and accidental pollution. Such insurance shall name the Port, its commissioners, directors, officers, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by the Permittee. The coverage provided by this policy shall be primary and any other insurance carried by Port is excess.

Permittee shall maintain in force Workers' Compensation insurance coverage for Employers' Liability and, if applicable, Longshore and Harbor Workers' Compensation Act. If Permittee is a qualified self-insured employer, a copy of Contractor's Certificate of Compliance and a certificate of insurance evidencing excess insurance shall be forwarded to Port upon execution of this Permit.

Permittee shall furnish to the Port a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Permit. All policies of insurance will provide for written notice to the Port and the Permittee before such policies may be revised,

nonrenewed, or cancelled. Upon request, Permittee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Permit.

**H. Liens:** The Permittee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with the Permittee's consent to be furnished to or for the Permittee in, upon, or about the Premises or improvements thereon, which may be secured by any mechanic's, materialmen's, or other lien against the Premises or improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Permittee may in good faith contest any mechanic's or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require the Permittee to procure a payment bond in the amount of the contested lien.

**I. Assignment of Interest of Rights:** The Permittee shall not, in any manner, directly or indirectly, by operation of law or otherwise, sublease, assign, transfer or encumber any of Permittee's rights granted by this instrument. Any attempted assignment or transfer shall be void.

**J. Attorney Fees:** If suit or action is instituted in connection with any controversy arising out of this Permit, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

**K. Warranties/Guarantees:** The Permittee acknowledges that it has inspected the Premises and has found them to be completely acceptable and safe for Permittee's intended use. Port makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that Port will not be responsible for any loss, damage or costs which may be incurred by Permittee by reason of any such physical condition.

**L. Compliance With Law:** Permittee shall comply with all applicable state, federal, and local laws, including but not limited to, City of Portland zoning ordinances and laws, rules, regulations, and policies concerning equal opportunity, nondiscrimination, Workers' Compensation, and minimum and prevailing wage requirements, and the rules and regulations adopted by the Port, the Port's Executive Director, or the Executive Director's designee.

**M. Notices:** All notices required under this Permit shall be sent to the addresses set forth below:

Mar Com Inc.  
3001 S.E. Columbia Way  
Building 41, Suite A  
Vancouver, WA 98661  
Attn: Tom Maples

Port of Portland  
5555 N. Channel Ave., Bldg. 50  
Portland, OR 97217

Attn: Contracts Administrator

**N. Hazardous Substances:** No use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of Hazardous Substances, as that term



is defined in Section O below, except for uses which are incidental to any business conducted on the Premises, the primary purpose of which is not the handling, storage, disposal, transportation, or discharge of Hazardous Substances. All of such uses shall be in strict conformance with all applicable federal, state, or local laws, rules, and regulations, as the same may be amended from time to time.

The Permittee shall immediately notify the Port upon becoming aware of: (1) any leak, spill, release, or disposal of a Hazardous Substance, as defined herein, on, under, or adjacent to the Premises, or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to the Permittee or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations or ordinances with respect to the Premises or activities on the Premises. In the event of a leak, spill, or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, for which Permittee is responsible under this Permit or any law or regulation, the Permittee shall, at its own cost and expense, immediately undertake all emergency response necessary to contain, clean up, and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial, and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substances is eliminated, and the Premises restored to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations, and the Port shall have the right to approve all investigatory, remedial, and removal procedures and the company(ies) and/or individual(s) conducting said procedures. Within 30 days following completion of such investigatory, remedial, and/or removal action, the Permittee shall provide the Port with a certification acceptable to the Port that all such contamination has been eliminated. Any costs incurred by or assessed against the Port shall be paid by Permittee promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is duly owing and so notifies the Permittee.

**O. Hazardous Waste Indemnity:** In addition to the indemnity provided in Section E above, Permittee agrees to indemnify, hold harmless, and defend the Port and the Port's commissioners, directors, officers, employees, agents, and contractors from and against all Costs (as defined below) incurred or assessed under Environmental Laws (as defined below), which Costs arise out of, are in connection with, or are a result of the acts or omissions of the Permittee, or Permittee's officers, directors, employees, agents, representatives, contractors, invitees or any other person or entity acting by or on behalf of the Permittee:

(A) "Costs" shall include, but not be limited to: (i) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (ii) the cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (iii) all expenses of evaluation, testing, analysis relating to Hazardous Substances (as defined below), including fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (v) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and



paralegal fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses; and (vi) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

(B) "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules, and ordinances now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances (as defined below) or relate to the protection of health, safety or the environment.

(C) "Hazardous Substances" shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants as are defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include without limitation asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, and urea formaldehyde, and any other substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.

(D) "Premises" shall be deemed to include the soil and water table thereof.

Permittee shall, at its sole expense, defend any and all actions, suits, and proceedings for which Permittee is responsible relating to matters covered by the indemnity set forth in Section O which may be brought against the Port or in which the Port may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.

**P. Security of Oily Marine Ballast Water or Slops:** Permittee shall take all reasonable steps to ensure that nobody will add anything to oily marine ballast water or slops delivered pursuant to this Permit between the time Permittee receives the oily marine ballast water or slops from the Company and the time Permittee delivers it to the BWTP. Reasonable steps shall include but not be limited to locking and sealing tanks on trucks used to transport oily marine ballast water or slops to PSY under this Permit.

**Q. Entire Agreement:** This Permit represents the entire agreement between the parties, and supersedes all prior or contemporaneous agreements or communication, written or oral. No amendment to this Permit shall be effective unless in writing and signed by the parties hereto.

MarCom Inc.

Tom Maples  
Signature

Tom Maples  
Typed Name

President  
Title

12-23-94  
Date

Port of Portland

John J. Thompson  
Authorized by

Executive Director  
Title

APPROVED AS TO LEGAL SUFFICIENCY

[Signature]  
Counsel, Port of Portland

**PORT OF PORTLAND  
PERMIT AND RIGHT-OF-ENTRY  
FOR USE OF BALLAST WATER TREATMENT PLANT  
PORTLAND SHIP YARD**

Date Issued: 1/1/95  
Permit No.: P00395

**PERMITTEE:**

Marine Vacuum Service, Inc.  
1516 Graham Street  
Seattle, WA 98108

Contact: John Somes  
Phone: (503) 286-3317

E.P.A. ID No.: WAD980974521

The Port of Portland hereby grants to Permittee the right to enter upon and use the below-described Premises in accordance with the terms and conditions set forth below.

**A. Premises and Permitted Use:** The "Premises" consist of those portions of the Portland Ship Yard ("PSY") over which Permittee must pass to reach the Ballast Water Treatment Plant ("BWTP"). Permittee may use the Premises for the limited purpose of transfer by truck of oily marine ballast water or slops to the BWTP. Port may accept oily marine ballast water or slops only if the material meets the Port's standards for acceptability and the Port has capacity at the BWTP to handle the material. Permittee shall not deliver or attempt to deliver non-marine material to the BWTP. Oily marine ballast water or slops generated outside PSY must be pre-approved by special application to the Port by the company generating the product. **THE PORT RESERVES THE RIGHT TO REFUSE OILY MARINE BALLAST WATER OR SLOPS FOR ANY REASON AND TO REQUIRE A CERTIFICATE OF CHEMICAL ANALYSIS PRIOR TO ACCEPTANCE OF ANY MATERIAL.**

Permittee agrees to comply with all Port policies, procedures, rules and regulations relating to use of the BWTP, including but not limited to rules adopted by the Port's Executive Director or Director of the Portland Ship Yard. Permittee shall furnish its E.P.A. Identification number, a Coast Guard Certificate of Adequacy, and current licenses, permits or inspection certificates for vehicles coming into PSY.

**B. Term of Permit:** The term of the Permit shall be January 1, 1995 through December 31, 1995, unless terminated as provided herein.

**C. Compensation to be Paid by Permittee:** Permittee shall owe no compensation for use of the BWTP, provided that Permittee acts only as a hauler of oily marine ballast water or slops.

The company generating the oily marine ballast water or slops ("Company") will be responsible for payment to the Port for disposal, in accordance with the current PSY Price Schedule rates.

**D. Port's Right to Terminate:** Notwithstanding any provision contained herein, the Port through its authorized representative may terminate this Permit, verbally or in writing, at any time for its convenience or for Permittee's default. Upon notice of termination, the Permittee shall immediately leave the Premises. Permittee's obligations and liability to the Port shall survive termination. Unless waived by the Port, the Permittee shall restore the Premises to its condition at the commencement hereof, ordinary wear and tear excepted.

**E. Indemnity:** Permittee is an independent contractor and agrees to fully indemnify, hold harmless and defend the Port, its commissioners, directors, officers, agents and employees from and against all claims, penalties, actions, damages, injuries, any financial loss or expenses incidental to the investigation and defense thereof, including reasonable attorney's fees, based upon or arising out of the acts or omissions of, or use or occupancy of the Premises by Permittee, its agents, contractors, invitees, employees, or any person or entity acting at the direction or under the control of Permittee.

**F. No Benefit to Third Parties:** The Port and Permittee are the only parties to this Permit and as such are the only parties entitled to enforce its terms. Nothing in this Permit gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

**G. Insurance:** In addition to any special insurance requirements, Permittee shall maintain an occurrence form commercial general and automobile liability insurance policy or policies for the protection of Permittee and the Port, its commissioners, directors, officers, agents, and employees, and insuring Permittee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to this Permit or occasioned by reason of operations of the Permittee on or from the Premises with insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Policies shall be endorsed to provide coverage for sudden and accidental pollution. Such insurance shall name the Port, its commissioners, directors, officers, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by the Permittee. The coverage provided by this policy shall be primary and any other insurance carried by Port is excess.

Permittee shall maintain in force Workers' Compensation insurance coverage for Employers' Liability and, if applicable, Longshore and Harbor Workers' Compensation Act. If Permittee is a qualified self-insured employer, a copy of Contractor's Certificate of Compliance and a certificate of insurance evidencing excess insurance shall be forwarded to Port upon execution of this Permit.

Permittee shall furnish to the Port a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Permit. All policies of insurance will provide for written notice to the Port and the Permittee before such policies may be revised,



nonrenewed, or cancelled. Upon request, Permittee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Permit.

**H. Liens:** The Permittee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with the Permittee's consent to be furnished to or for the Permittee in, upon, or about the Premises or improvements thereon, which may be secured by any mechanic's, materialmen's, or other lien against the Premises or improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Permittee may in good faith contest any mechanic's or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require the Permittee to procure a payment bond in the amount of the contested lien.

**I. Assignment of Interest of Rights:** The Permittee shall not, in any manner, directly or indirectly, by operation of law or otherwise, sublease, assign, transfer or encumber any of Permittee's rights granted by this instrument. Any attempted assignment or transfer shall be void.

**J. Attorney Fees:** If suit or action is instituted in connection with any controversy arising out of this Permit, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

**K. Warranties/Guarantees:** The Permittee acknowledges that it has inspected the Premises and has found them to be completely acceptable and safe for Permittee's intended use. Port makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that Port will not be responsible for any loss, damage or costs which may be incurred by Permittee by reason of any such physical condition.

**L. Compliance With Law:** Permittee shall comply with all applicable state, federal, and local laws, including but not limited to, City of Portland zoning ordinances and laws, rules, regulations, and policies concerning equal opportunity, nondiscrimination, Workers' Compensation, and minimum and prevailing wage requirements, and the rules and regulations adopted by the Port, the Port's Executive Director, or the Executive Director's designee.

**M. Notices:** All notices required under this Permit shall be sent to the addresses set forth below:

Marine Vacuum Service, Inc.  
1516 Graham Street  
Seattle, WA 98108  
Attn: John Somes

Port of Portland  
5555 N. Channel Ave., Bldg. 50  
Portland, OR 97217  
Attn: Contracts Administrator

**N. Hazardous Substances:** No use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of Hazardous Substances, as that term is defined in Section O below, except for uses which are incidental to any business conducted

on the Premises, the primary purpose of which is not the handling, storage, disposal, transportation, or discharge of Hazardous Substances. All of such uses shall be in strict conformance with all applicable federal, state, or local laws, rules, and regulations, as the same may be amended from time to time.

The Permittee shall immediately notify the Port upon becoming aware of: (1) any leak, spill, release, or disposal of a Hazardous Substance, as defined herein, on, under, or adjacent to the Premises, or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to the Permittee or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations or ordinances with respect to the Premises or activities on the Premises. In the event of a leak, spill, or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, for which Permittee is responsible under this Permit or any law or regulation, the Permittee shall, at its own cost and expense, immediately undertake all emergency response necessary to contain, clean up, and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial, and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substances is eliminated, and the Premises restored to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations, and the Port shall have the right to approve all investigatory, remedial, and removal procedures and the company(ies) and/or individual(s) conducting said procedures. Within 30 days following completion of such investigatory, remedial, and/or removal action, the Permittee shall provide the Port with a certification acceptable to the Port that all such contamination has been eliminated. Any costs incurred by or assessed against the Port shall be paid by Permittee promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is duly owing and so notifies the Permittee.

**O. Hazardous Waste Indemnity:** In addition to the indemnity provided in Section E above, Permittee agrees to indemnify, hold harmless, and defend the Port and the Port's commissioners, directors, officers, employees, agents, and contractors from and against all Costs (as defined below) incurred or assessed under Environmental Laws (as defined below), which Costs arise out of, are in connection with, or are a result of the acts or omissions of the Permittee, or Permittee's officers, directors, employees, agents, representatives, contractors, invitees or any other person or entity acting by or on behalf of the Permittee:

(A) "Costs" shall include, but not be limited to: (i) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (ii) the cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (iii) all expenses of evaluation, testing, analysis relating to Hazardous Substances (as defined below), including fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (v) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and

telephone charges and other expenses; and (vi) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

(B) "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules, and ordinances now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances (as defined below) or relate to the protection of health, safety or the environment.

(C) "Hazardous Substances" shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants as are defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include without limitation asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, and urea formaldehyde, and any other substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.


(D) "Premises" shall be deemed to include the soil and water table thereof.

Permittee shall, at its sole expense, defend any and all actions, suits, and proceedings for which Permittee is responsible relating to matters covered by the indemnity set forth in Section O which may be brought against the Port or in which the Port may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.

**P. Security of Oily Marine Ballast Water or Slops:** Permittee shall take all reasonable steps to ensure that nobody will add anything to oily marine ballast water or slops delivered pursuant to this Permit between the time Permittee receives the oily marine ballast water or slops from the Company and the time Permittee delivers it to the BWTP. Reasonable steps shall include but not be limited to locking and sealing tanks on trucks used to transport oily marine ballast water or slops to PSY under this Permit.

**Q. Entire Agreement:** This Permit represents the entire agreement between the parties, and supersedes all prior or contemporaneous agreements or communication, written or oral. No amendment to this Permit shall be effective unless in writing and signed by the parties hereto.

Marine Vacuum Service, Inc.

  
Signature


John H. Somes  
Typed Name

Operations  
Title

December 23, 1994  
Date

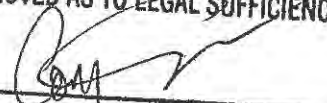
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Port of Portland

  
Authorized by

Executive Director  
Title

APPROVED AS TO LEGAL SUFFICIENCY

  
Counsel Port of Portland



**PORT OF PORTLAND  
PERMIT AND RIGHT-OF-ENTRY  
FOR USE OF BALLAST WATER TREATMENT PLANT  
PORTLAND SHIP YARD**

Date Issued: 8/22/94  
Permit No.: P02794

**PERMITTEE:**

Marine Vacuum Service, Inc.  
1516 Graham Street  
Seattle, WA 98108

Contact: John Somes  
Phone: (503) 286-3317

E.P.A. ID No.: WAD980974521

The Port of Portland hereby grants to Permittee the right to enter upon and use the below-described Premises in accordance with the terms and conditions set forth below.

**A. Premises and Permitted Use:** The "Premises" consist of those portions of the Portland Ship Yard ("PSY") over which Permittee must pass to reach the Ballast Water Treatment Plant ("BWTP"). Permittee may use the Premises for the limited purpose of transfer by truck of oily marine ballast water or slops to the BWTP. Port may accept oily marine ballast water or slops only if the material meets the Port's standards for acceptability and the Port has capacity at the BWTP to handle the material. Permittee shall not deliver or attempt to deliver non-marine material to the BWTP. Oily marine ballast water or slops generated outside PSY must be pre-approved by special application to the Port by the company generating the product. **THE PORT RESERVES THE RIGHT TO REFUSE OILY MARINE BALLAST WATER OR SLOPS FOR ANY REASON AND TO REQUIRE A CERTIFICATE OF CHEMICAL ANALYSIS PRIOR TO ACCEPTANCE OF ANY MATERIAL.**

Permittee agrees to comply with all Port policies, procedures, rules and regulations relating to use of the BWTP, including but not limited to rules adopted by the Port's Executive Director or Director of the Portland Ship Yard. Permittee shall furnish its E.P.A. Identification number, a Coast Guard Certificate of Adequacy, and current licenses, permits or inspection certificates for vehicles coming into PSY.

**B. Term of Permit:** The term of the Permit shall be April 1, 1994 through December 31, 1994, unless terminated as provided herein.

**C. Compensation to be Paid by Permittee:** Permittee shall owe no compensation for use of the BWTP, provided that Permittee acts only as a hauler of oily marine ballast water or slops.

The company generating the oily marine ballast water or slops ("Company") will be responsible for payment to the Port for disposal, in accordance with the current PSY Price Schedule rates.

**D. Port's Right to Terminate:** Notwithstanding any provision contained herein, the Port through its authorized representative may terminate this Permit, verbally or in writing, at any time for its convenience or for Permittee's default. Upon notice of termination, the Permittee shall immediately leave the Premises. Permittee's obligations and liability to the Port shall survive termination. Unless waived by the Port, the Permittee shall restore the Premises to its condition at the commencement hereof, ordinary wear and tear excepted.

**E. Indemnity:** Permittee is an independent contractor and agrees to fully indemnify, hold harmless and defend the Port, its commissioners, directors, officers, agents and employees from and against all claims, penalties, actions, damages, injuries, any financial loss or expenses incidental to the investigation and defense thereof, including reasonable attorney's fees, based upon or arising out of the acts or omissions of, or use or occupancy of the Premises by Permittee, its agents, contractors, invitees, employees, or any person or entity acting at the direction or under the control of Permittee.

**F. No Benefit to Third Parties:** The Port and Permittee are the only parties to this Permit and as such are the only parties entitled to enforce its terms. Nothing in this Permit gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

**G. Insurance:** In addition to any special insurance requirements, Permittee shall maintain an occurrence form commercial general and automobile liability insurance policy or policies for the protection of Permittee and the Port, its commissioners, directors, officers, agents, and employees, and insuring Permittee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to this Permit or occasioned by reason of operations of the Permittee on or from the Premises with insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Policies shall be endorsed to provide coverage for sudden and accidental pollution. Such insurance shall name the Port, its commissioners, directors, officers, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by the Permittee. The coverage provided by this policy shall be primary and any other insurance carried by Port is excess.

Permittee shall maintain in force Workers' Compensation insurance coverage for Employers' Liability and, if applicable, Longshore and Harbor Workers' Compensation Act. If Permittee is a qualified self-insured employer, a copy of Contractor's Certificate of Compliance and a certificate of insurance evidencing excess insurance shall be forwarded to Port upon execution of this Permit.

Permittee shall furnish to the Port a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Permit. All policies of insurance will provide for written notice to the Port and the Permittee before such policies may be revised,